

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1076

B p/s

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

No. 77-1076

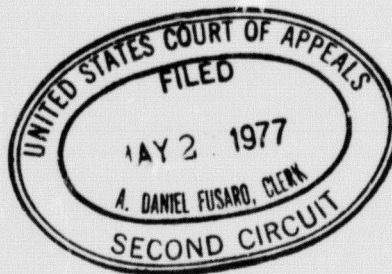
DANIEL PEREZ,

Defendant-Appellant.

-----X

A P P E N D I X
of

DEFENDANT-APPELLANT



HELENA PICHEL SOLLEDER
19 RECTOR STREET
NEW YORK, N. Y. 10006
TEL. BO. 9-2222

Attorney for defendant-appellant

PAGINATION AS IN ORIGINAL COPY

INDEX

Docket Entries	A
Judgment of Conviction	B
Indictment	C
Excerpts from Government Summation	D
Charge of the Court	E
Transcript of Jury Deliberations (First Trial- 7/26, 27, 1976)	F-1-5
Excerpts from Governments Trial Brief	G
Excerpts from Defendant's Motion to Dismiss Indictment - 11/28/77 - with excerpts from Testimony of Grand Jury included therein	H

76CR 351

JOHN DOE a/k/a DANIEL

BRAMWELL J.

JUDGE MAGISTRATE Assigned

0720

207

1

0721

(LAST FIRST MIDDLE)

-1

76

351

1

U.S. TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

26-7206(2)&
18-2

Did counsel, advise, and assist in connection with matters arising under Int. Revenue Laws of the US of return of a document, Form 1099, which was false, etc.

U.S. MAG. CASE NO. 76 M 616

II. KEY DATES & INTERVALS

ARREST OF

U.S. Custody Begin

U.S. Custody End

U.S. Custody

3/23/76

5-19-76 5-27-76 ~~7-6-76~~ 9/7/76

AMT \$2,500
Date 3/23/76
Fugitive ☒
Pers Recog. ☒
PSA ☐
conditions
10% Deposit ☐
Surety Bond ☐
Collateral ☐
3rd Party Cust ☐
Other ☐
Sentence

Search Warrant
Return
Summons
Served
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)

3/22/76
3/23/76

MS/070B
VAC/070A

MAGISTRATE

INITIAL APPEARANCE 3/23/76
PRELIMINARY EXAMINATION 4/29/76
INVESTIGATION
INTERVIEW

X/Musical

DISMISSED
X/OTHER PROSECUTOR
IN THIS DISTRICT

Assist, procure, counsel and advise in the preparation and presentation of false documents to Internal Revenue Svce- T. 26 USC

U.S. Attorney or Asst.

ATTORNEYS X

Sec 7206

MARSHA KATZ, ESQ.

HELENA PICHEL-SOLLEDER, ESQ.
19 Rector Street
New York, New York 10005

BO 9-2222 4-6-76 - received assignment of letter of counsel

* Show last names and suffix numbers of other defendants on same indictment/information

DATE	(DOCUMENT NO.)	PROCEEDINGS
3/22/76		Arrest Warrant Issued
3/23/76		Arraignment
4-26-76		At request of D.C. Pichel-Solleder, Esq. case adjourned to May 13, 1976 at 2:00 PM on consent to AUSA Sleppin.
5-13-76		Case adjourned by D.C. Solleder to May 27, 1976 at 2:00 P.M.
5/19/76		Deft. Indicted - See 76 CR 351
5-19-76		Beford COSTANTINO J - Indictment filed.
5-27-76		Before COSTANTINO J - case called - deft & counsel Helena Pichel-Solleder present - Mr. Emil Rodriguez sworn as interpreter - deft arraigned and enters a plea of not guilty - bail fixed at \$2500 personal bond - case adjd to July 6, 1976 for trial.
6/4/76		Before BRAMWELL, J- case called- deft and counsel not present case adjd to 6/18/76 at 2:30 P.M. at request of U.S. Atty
6-18-76		Before BRAMWELL, J- Case called. Deft & counsel not present. Case adj'd to 6-25-76 at 10 A.M.

FORM 40-106

A

6-21-76 Before BRAMWELL, J - case called - deft not present -
counsel Helena Pichel Solleder present - case adjd to June 25, 1976

6-25-76 Before BRAMWELL, J. - Case called. Deft not present.
counsel present. Bench warrant ordered & issued.

6-25-76 Notice of readiness for trial filed.

7-6-76 Before BRAMWELL, J. - Case called. Deft & counsel
present. Bench warrant vacated. Emil Rodriguez
sworn as interpreter. Case adj'd to 7-20-76 at
10 A.M. for trial. 3 6/24/76
7/6/76 M

7-8-76 Warrent returned & vacated.

7-19-76 Govts Trial Brief filed; and Govts Requests to Charge filed.

7-21-76 Before BRAMWELL, J. - Case called. Deft & Counsel Helena
Pichel - Solleder present. Trial ordered & selection
of jurors begun. Trial continued to 7/22/76 at 10:00 a.m.

7-22-76 Before BRAMWELL, J. - Case called. Deft & Counsel present.
Trial resumed. Richard Schoen sworn as Interpreter for Deft.
Defts motion to dismiss Indictment etc. Motion denied.
Trial continued to 7/23/76 at 2:00 p.m.

7-23-76 Before BRAMWELL J - case called - deft & counsel Helena Pichel-
Solleder present Interpreter Richard Schoen present - trial
resumed - Jury #2 not present - alt. #1 now Juror #2 - deft rests-
defts motion to dismiss the indictment - motion denied - trial
contd to July 26, 1976 at 10:30 am.

7-24-76 Before BRAMWELL, J - case called - deft & atty present -
Interpreter Richard Schoen present - trial resumed - 2 orders
of sustenance filed - trial contd to July 27, 1976.

7-27-76 Before BRAMWELL, J. - Case called. Deft & Counsel present.
Trial resumed. Order of Sustenance signed. Jury came into
Court at 4:55 p.m. Court read Allen charge. Jury came into
Court at 6:25 p.m. & rendered a verdict of not guilty on
Count (1) 7 cannot agree on Counts (2) & (3) - Court declares
mis-trial - Jury discharged. Defts motion to dismiss counts
2 & 3 - Motion DENIED. Case set down for 9/7/76 at 10:00 a.m.
for trial. Trial concluded.

7-27-76 By BRAMWELL, J. 2 Orders of sustenance and lodging filed.

7-28-76 Voucher for compensation for expert services filed

7-29-76 Voucher for compensation for expert services filed.

7-30-76 Before BRAMWELL, J. - Case called. Deft present. Counsel
Helena Solleder not present. Case adjd to 9/17/76 at 2:30 p.m.

8-1-76 Mandate received from the Court of appeals filed denying
writ of mandamus. T

8-2-76 Before BRAMWELL, J. - Case called. Deft & Counsel present.
Case adjd to 10/22/76 at 2:30 p.m. for trial.

8-3-76 Stenographic transcripts dtd. 7-26-76 and 7-27-76 filed. 9/17/76 T -

A

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

JOHN DOE aka Daniel Perez

76 CR 351

76 CR 351

Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
10-22-76	Voucher for compensation for expert services filed				
10-22-76	Before Bramwell, J.- Case Called. Deft & Counsel not present. Case adjd. to 11-8-76 at 10:00 A.M. for trial.			10-22-76	M
10-29-76	Notice of Motion for dismissal of the indictment, pursuant to Rule 12 returnable 11-8-76. - Filed.			11/1/76	
11-3-76	Govts memorandum filed/response to defts motion to dismiss the indictment. (ret'd to Chambers as directed)				
11-8-76	Before BRAMWELL, J - case called - deft & atty not present - adjd to Nov. 15, 1976. (for trial) motion to dismiss the indictment is adjd to Nov. 15, 1976				M
11-15-76	Before Bramwell, J.- Case Called. Deft's motion to dismiss the indictment is submitted. Decision Reserved.				
11-15-76	Before Bramwell, J.- Case Marked Ready & Passed to follow 76 CR 226 S for Trial.				
11-15-76	By Bramwell, J. - Order for expert Services Filed.				
11-22-76	Before Bramwell, J.- Case Called. Deft. & Counsel present with interpreter Manuel Ras sworn. Case adjd. to 11-23-76 at 2:00 P.M. for Trial.				
11-24-76	Before Bramwell, J - case called - defts motion to dismiss etc. motion argued and denied - Settle order on copy received.				
11/24/76	Before BRAMWELL, J. - Case called. Deft not present. Counsel present. Trial adjd to 11/29/76 at 10:30 a.m.				M
11-29-76	Before BRAMWELL, J - case called - deft not present - counsel Helena Pichel-Solleder present - Bench Warrant ordered - personal bond of \$2500 deemed forfeited.				M
11/29/76	Bench warrant issued.				
12/1/76	Before BRAMWELL, J.- Case called. Deft and counsel present. Bench warrant vacated and bail is reinstated to original amount. Case adjd to 12/7/76 at 2:00 p.m. - Case marked ready and passed to follow 75 CR 401.				
12-8-76	By Bramwell, J.- Order filed appointing Counsel.				
12-7-76	Before Bramwell, J.- Case Called. Deft. & Counsel present, Schorn sworn as Interpreter present. Trial begun. Jurors were selected and sworn. Court assigns Mrs. Helena Pichel Solleder as counsel for re-trial. Trial continued to 12-8-76 at 10:15 A.M.				
12-8-76	Voucher forwarded to the court of appeals for approval				
12-8-76	Before Bramwell, J.- Case Called. Deft. & Counsel present with Interpreter Schorn sworn. Trial resumed. Trial continued to 12-9-76 at 10:15 A.M.				
12-9-76	Before Bramwell, J.- Case Called. Deft. not present. Counsel & Interpreter present. Bail bond forfeited. Bench warrant ordered. Trial continued to 12-10-76 at 11:30 A.M.				
12-9-76	Bench Warrant Issued.				
12-9-76	Voucher for Compensation for Expert Services filed.				

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
12-10-76	(Document 14) Before Bramwell, J.- Case Called. Deft. brought into court on Bench Warrant by I.R.S. agents - Warrant returned executed. Deft. & Counsel and Interpreter present. Deft's. motion for a mistrial. Motion denied. Trial resumed. Govt. rests. Deft's. motion to dismiss indictment etc. denied. Deft. remanded trial continued to 12-13-76 at 10:15 A.M.				
12-10-76	By Bramwell, J.- Order filed that the deft. is remanded to the U.S. Marshal, is to be lodged at M.C.C. and is directed to immediately cause a physical and psychiatric examination at M.C.C.				
12-10-76	Bench Warrant returned and filed. Executed.				
12-13-76	Before Bramwell, J.- Called (Case) Deft., Counsel and Interpreter present. Trial resumed. Deft. Rests. Deft's. motion to dismiss Indictment etc. - Motion denied. Court charges Jury at 4:00 P.M. to 4:55 P.M. Alternate Jurors discharged. Jury retires for deliberations at 5:00 P.M. Jury came into Court at 6:10 P.M. for instructions Jury retires for deliberations at 6:15 P.M. Jury came into Court at 6:25 P.M. and rendered a verdict of GUILTY on counts two and three. Jury polled. Jury discharged. Deft. released on Personal Bond of \$5,000.00 and sentence adjd. without date. Trial concluded.				
12-14-76	Voucher for Compensation for Expert Services filed.				
12-22-76	Certified copy of remand order returned and filed/executed. Deft delivered to MCC.				
1-17-77	Voucher for Compensation for Counsel filed and forwarded to Washington for Payment.				
2/11/77	Before BRAMWELL, J.- Case called. Deft & Counsel Helmut Pickel-Solleder present. Deft moves to set aside verdict - motion denied. Deft sentenced to imprisonment for a period of 2 years on each of counts 2 and 3. Execution of sentence is suspended and deft is placed on probation for a period of 3 years, with the Special Condition that deft attend Carriers Anonymous on a regular basis as directed by the Prob. Dept. Sentence on count 3 to run concurrent with sentence in count (2). Deft advised of his right to appeal pursuant to rule 32 (a)(2) of Federal Rules in forma pauperis without payment of fee.				
2/11/77	Notice of Appeal filed.				
2/11/77	Docket entries and duplicate of Notice of Appeal mailed to the C of A.				
2.25.77	Order filed received from the Court of Appeals that the record be docketed on or before March 21, 1977, in default of which the appeal shall be dismissed forthwith.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

DANIEL PEREZ



76 351
Yr. Docket No. Def.

DATE

PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

(a) (b) (c) (d)

3-22-77

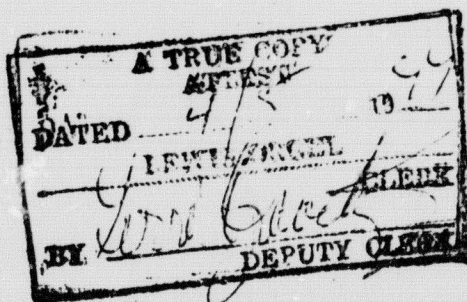
(Document No.) Stenographers transcript filed dated Dec. 8, 1976

3-24-77

Acknowledgment filed received from the Court of Appeals for the Record on Appeal.

4-4-77

Voucher for compensation for expert services filed



PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 2 DAY 11 YEAR 77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Helena Pichel Sallerder, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in counts two (2) and three (3).

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-26, U.S.C., Section 7206 and T-18, U.S.C., Section 2 in that from January 21, 1976 and January 27, 1976, both dates being approximate and inclusive, the defendant, unlawfully, wilfully and knowingly did aid and assist, procure, counsel advise and cause the preparation and presentation, in connection with matters arising under the Internal Revenue laws of the United States; Information Return, Form 1099, which was fraudulent and false as to material matters.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

2 years on each of counts (2) and (3). Execution of sentence is suspended and defendant is placed on probation for a period of 3 years, with the special condition that defendant attend Gambler Anonymous on a regular basis as directed by the Probation Department. Sentence on count (3) to run concurrent with sentence in count (2).

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation set out above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be observed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

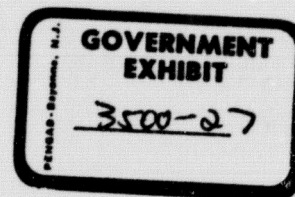
☐ U.S. Magistrate

Helena Pichel Sallerder

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★ FEB 11 1977 ★
TIME A.M.
P.M.

C
"LW:AKS:cc
#761362

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA

-v-

DANIEL PEREZ

Defendant

INDICTMENT
26 U.S. §7206(?)
18 U.S.C. §2

-----X
THE GRAND JURY CHARGES:

120
COUNT ONE

That on or about the 21st day of January, 1976 in the Eastern District of New York, DANIEL PEREZ, unlawfully, wilfully and knowingly did aid and assist, procure, counsel, advise and cause the preparation and presentation, in connection with matters arising under the Internal Revenue laws of the United States, of a return and document to wit, a United States Information Return, Form 1099, which was fraudulent and false as to material matters in that the name of the recipient of the income from payment of a winning pari-mutuel Triple ticket issued by the New York Racing Association, Inc., Jamaica, New York, was falsely stated, misrepresented and concealed.

(Title 26, United States Code, Section 7206(2) and
Title 18, United States Code, Section 2)

COUNT TWO THREE

That on or about the 27th day of January, 1976, in the Eastern District of New York DANIEL PEREZ, unlawfully, wilfully and knowingly did aid and assist, procure, counsel, advise and cause the preparation and presentation, in connection with matters arising under the Internal Revenue laws of the United States, of a return and document to wit, a

United States Information Return, Form 1099, which was fraudulent and false as to material matters in that the name of the recipient of the income from payment of a winning pari-mutuel Exacta ticket issued by the New York Racing Association, Inc., Jamaica, New York, was falsely stated, misrepresented and concealed.

(Title 26, United States Code, Section 7206(2) and
Title 18, United States Code, Section 2)

A TRUE BILL

F O R E M A N

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

10

Sands - summation

are prepared.

The third thing the Government has to show is what the defendant did, caused the false 1099 to be prepared and the fourth thing is that it was willful, it was done with some sort of purpose. It wasn't done accidentally, carelessly or something that just happened. The defendant's act was done purposely, willfully.

The Court will define all those things.

I must confess until a few moments ago it was unclear to me, and I think it was unclear to you as to exactly what the defense was in this case.

MS. SOLLEDER: Objection, your Honor.

THE COURT: He can comment if it was unclear to him, that's his position.

MS. SOLLEDER: He told the jury that it probably was unclear to them, too.

THE COURT: If it's unclear to him, that's up to him, it's up to the jury which facts are clear or unclear apart and aside from anything which counsel states

MR. SANDS: From my last comment I did not mean to imply or suggest that the defendant has any burden. The Government has a responsibility. We submit that we have done that. During my chance to speak to you this time, I'm going to try to marshal the evidence and show

D

Sends - summation

16 1
2 necessarily for the truth of the matter asserted. It's
3 on there, and the man from the post office testified,
4 that all he could say about that it was non-deliverable
5 and it was returned to the sender.

6 In other words, we cannot say -- the evidence
7 does not show one way or the other whether a Carlos Diaz
8 ever lived at 148 West 17th Street, except for the fact
9 the real Mr. Carlos Diaz testified that he never lived
10 there. We all know who the real Carlos Diaz is.

11 The Government produced -- that he's Carlos Diaz,
12 with the Social Security number that was given by the
13 defendant at the reactrack on the 25th and 27th.

14 In addition, we have the handwriting exemplars
15 that the Government marked and received in this case
16 that were given by the defendant from the exemplars.
17 The handwriting expert made his examination and evalua-
18 tion.

19 In addition to the exemplars that I now hold in
20 my hand, which are Government's exhibits 4, 5, 6 and 7,
21 there were three additional exemplars which became for
22 purposes of this trial defendant's exhibit A, and
23 Mr. Rennart, the handwriting expert, he used all the
24 handwriting exemplars including the three that were
25 marked defendant's exhibit A.

Summation-Sands

7 1
2
3 27th. You heard from, I believe, both Agent Marino
4 and Agent Levy, although I do not recall whether I
5 asked both of them this question, I think certainly
6 one, whether or not Mr. Perez was in fact the true
7 winner, he said he doesn't know. We are not here to
8 determine whether or not he was in fact the true
9 winner. The indictment doesn't talk about who was the
10 true winner; the indictment talks solely about whether
11 the defendant caused false information to be provided
12 on that form that was signed by the defendant and
13 thereafter would cause the false 1099 or IRS information
14 to be filed.

15 I tell you all these things so you can under-
16 stand what the issues are. The issues are narrow.
17 Certainly we consider a lot of evidence but ultimately
18 you must resolve certain factual issues, and I think
19 what we have done is explain what they are.

20 Don't lose sight of what those issues are.
21 Again without trying to be repetitious, the case is
22 not a very complex one. To reiterate briefly again,
23 and I'll be brief, the charges are contained in the
24 indictment. The Government must prove those charges
25 beyond a reasonable doubt. The way we do that is by
evidence, by the testimony of witnesses and by exhibits.

D

Summation

2 1
2 judge their adversary and they try to determine
3 what their adversary is going to do. The defendant
4 doesn't have to do a single thing, you have been
5 told that. Once a defense lawyer undertakes to
6 present a defense to the jury, the jury has a right
7 to look at what the defense has tried to do and
8 square that with the entire case and see whether or
9 not there is a reasonable doubt as to the entire
10 case.

11 I look at my watch when counsel stood up,
12 my watch was 3:03, counsel just finished her
13 remarks, it was 3:44. Counsel attacked every point
14 that the government made and every conceivable
15 point that the government didn't make that the
16 defense argues the government should have made.

17 By my calculation counsel addressed you for
18 41 minutes. Do you remember Danny Perez take the
19 stand and deny under oath I did not sign those
20 forms. I didn't hear that and I don't think any
21 of you heard that, and that's the threshold of
22 question. The defendant doesn't have to prove a
23 single thing but once the defendant takes the
24 witness stand like any other witness, he's to be
25 judged as any other witness and perjury or lying

D

3 1 Summation

2 to the jury --

3 Ms. Soleder: Objection.

4 THE COURT: We don't have that in this case.
5 We don't have that as one of the crimes in this
6 case.

7 MS. SOLEDER: I move for a mistrial.

8 THE COURT: That's denied. The jury will
9 disregard it, it's not one of the crimes before the
10 jury, and the jury is to believe the credibility,
11 of any witness before this Court. That's the jury's
12 province and the jury has no right to decide any-
13 thing other than that.

14 You may proceed, Mr. Sands.

15 MR. SANDS: If I misspoke, I apologize.
16 When a defendant takes the stand you have a right
17 to judge what he says the way you would any other
18 witness. If you feel he misstated something to you,
19 you have a right to reject all or part of his
20 testimony and in particular, when a defendant takes
21 the stand you have a right to credit or discredit
22 his testimony based upon what he says just the way
23 as you would any other witness.

24 The question is whether the government has
25 met its burden of proof. The defendant took the

D

Summation

(After recess.)

THE COURT: All ready to proceed?

(Whereupon jurors returned to the courtroom,
are now seated in the jury box.)

THE COURT: I'm about to charge the jury.
You may not leave during the charge. If anyone
wishes to leave they may do so now.

Madam forelady, ladies and gentlemen of the
jury, we come now to the final stage of the pro-
ceedings. The Court will now charge you on the
law to be applied to the facts in the case. As you
may recall, I initially gave you a precharge as to
the manner in which the case would be presented to
you. I told you that most of the evidence in the
case would come in the form of testimony of
witnesses and you were to pay special attention to
the manner in which the witnesses testified. I
believe I also instructed you that you would be the
judges of the facts in the case, that being your
sole province, and that your recollection of the
facts after having heard all the evidence in the
case, the testimony of witnesses, documentary proof
was to control the determination of the issues.

Likewise at that time I told you that I

E

8

Charge

1 would be the judge of the law. This has not changed
2 at this stage of the proceedings. I will not reveal
3 the fact in this case for you because I am certain
4 that with summations by the attorneys, there is no
5 need for the Court to review these facts.
6

7 In any event, if you find that there is some
8 fact in the case that you may have forgotten or
9 don't recollect or you can't agree with each other
10 in your deliberations, you could have it read back
11 from the record and that will, I am sure, refresh
12 your memory. In any event, I am the judge of the
13 law. You must accept what I say to be the law in
14 this case.

15 Now, the attorneys have been permitted by
16 the Court and by the rules to make opening state-
17 ments and summations to you. But in no circum-
18 stances are the statements they have made by way
19 of opening or by way of summation to be taken as
20 evidence. However, the Court and the law does
21 permit you to take the arguments that they have
22 proffered before you and weight those arguments,
23 and if you agree with what they have said on
24 either side of the case, you may use those
25 arguments in your deliberations and in discussing

E

2 the case with each other and try to convince one
3 another as to what the final determination shall be
4 with reference to the deliberations at hand.

5 If you feel that the arguments are not com-
6 mensurate with the testimony and the proof in the
7 case you may disregard them. The arguments are not
8 evidence. You need not weigh them. However, there
9 are times when the arguments of the attorneys will
10 give you an insight as to something you may have
11 missed and you may discuss that portion of it, if
12 you so desire.

13 Now, of course, I also said to you that
14 during the trial the Court will be the judge of
15 the law. Likewise as to motions which at times
16 we had at a side bar, as you may recall, that was
17 not for the purpose of keeping any of the proof
18 from you but were matters of law that were discussed
19 between the attorneys and the Court itself, and
20 should not have come before you, and in any event,
21 if you feel that you have discovered by some stretch
22 of your imagination what this Court thinks as to
23 either some of the testimony or the case itself,
24 you should remove that from your mind because I
25 tell you here and now I have come to no conclusion

10 1

Charge

2 In this case, nor have I indicated to you in any
3 way whatsoever what my feeling is with reference to
4 the facts in the case, or with reference to the
5 guilt or innocence of the defendant, that is your
6 problem and your job. You should not try to weigh
7 what you believe the Court's impression may be.

8 You must understand that the lawyers who
9 appear before you are advocates, they are advocating
10 the best case they can for the parties they re-
11 resent, and they have a right to exercise as much
12 forcefulness as they desire in their questioning or
13 otherwise in presenting their case. I say this
14 because this is within the framework of the ordinary
15 trial.

16 In determining the facts, the jury is reminded
17 that before each member was accepted and sworn to
18 act as a juror, he or she was asked questions re-
19 garding his or her competency, qualifications, fair-
20 ness and freedom from prejudice or sympathy. On
21 the face of those answers the jury was accepted by
22 the parties. Therefore, those answers are as binding
23 on each of the jurors now as they were then and
24 should remain so until the jury is discharged from
25 consideration of this case.

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2 You cannot decide that you do not like the
3 sections of the law that I will quote to you, or
4 any part of the charge. You have the obligation of
5 accepting the law as I charge you, just as I have
6 the obligation of accepting your findings of facts
7 and your ultimate verdict as to the guilt or in-
8 nocence of the defendant as to each charge.

9 It lends for predictability and stability
10 if judges throughout the country in types of
11 charges such as this charge either formally or
12 substantially so, and that juries accept it. It
13 would be unfair for you to decide this case on
14 your own notions, on what the law should be, and
15 another jury beside it on their own notions on
16 what the law should be, that is why the obligation
17 is a firm one and one that you should understand.

18 Of course, you understand by this time that
19 this case has come before you by way of an indict-
20 ment presented by a grand jury sitting in this
21 Eastern District. That indictment charges the
22 defendant with the counts I shall now read to you.
23 Remember the indictment is merely an accusation,
24 merely a piece of paper, it is not evidence and
25 it is not proof of anything.

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2 The indictment reads as follows:

3 Count two. On or about the twenty-first day
4 of January 1976 in the Eastern District of New York,
5 Daniel Perez unlawfully, wilfully and knowingly
6 did aid and assist, procure, counsel and advise
7 and cause the preparation and presentation in
8 connection with matters arising under the Internal
9 Revenue laws of the United States, of a return and
10 document, to wit, a United States information return
11 form 1099 which was fraudulent and false as to
12 material matters, in that the name of the recipient
13 of the income from payment from a winning paramutual
14 triple ticket issued by the New York Racing
15 Association, Inc., Jamaica, New York, was falsely
16 stated, misrepresented and concealed in violation
17 of Title 26, United States code, section 7206 (2)
18 and Title 18, United States code, section 2.

19 Count three, that on or about the 27th
20 day of January 1976 in the Eastern District of New
21 York, Daniel Perez unlawfully, wilfully and knowingly
22 did aid and assist, procure, counsel, advise and
23 cause the preparation and presentation in connection
24 with matters arising under the Internal Revenue
25 service laws of the United States of a return

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and document, to wit, a United States information return form 1099 which was fraudulent and false as to material matters in that the name of the recipient of the income from payment of a winning paramutual exact ticket issued by the New York Racing Association, Inc., Jamaica, New York, was falsely stated, misrepresented and concealed in violation of Title 26, United States code, Section 7206 (2) and Title 18, United States code, section 2.

I will give you some introductory remarks regarding the obligations under federal law of the New York Racing Association, Incorporated, relative to this case. Now, let me begin by advising you of the New York Racing Association obligations and the federal law, which are relevant to this case, title 26 of the United States code, section 641 (A) requires in pertinent part as follows:

"All persons engaged in a trade or business and making payment in the course of such trade or business to another person a fixed or determined gains, profits or income of six hundred dollars or more in any taxable year shall render a true and

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2 accurate return to the Secretary of the Treasury
3 of his delegate setting forth the amount of such
4 gains, profits and incomes, and the name and address
5 of the recipient of such payment. The section
6 which I have just read to you is followed by Title
7 26, United States Code, Section 6040 (D) which
8 provides as follows:

9 "Whenever necessary to make effective the
10 provisions of Section 6041 of the United States
11 Code, the name and address of the recipient of
12 income shall be furnished upon demand of the person
13 paying the income.

14 Introductory remarks regarding the statute
15 applicable to both counts two and three in this
16 case. The individual count numbers two and three
17 of this indictment are both based on the very same
18 sections of the very same two statutes which I'll
19 read for you in a few moments, to wit, Title 26,
20 United States code, Section 7206 (2) and Title 18,
21 United States code, Section 2. Let me emphasize
22 this to you for it is of crucial importance. The
23 counts numbered two and three are based on the very
24 same sections of the very same statute, each count
25 charges a separate offense occurring on or about

2 a different time and involving a separate and
3 different transaction with the New York Racing
4 Association, Incorporated. Therefore, each count
5 should be carefully, seriously and separately and
6 individually considered by you as such. I will
7 now read for you the applicable law governing the
8 separate and individual counts numbered two and
9 three. Please apply this law to each of the afore-
10 mentioned counts separately and individually. In
11 each case ask yourselves in applying the law, do
12 each factual transaction set out the individual
13 count numbered two and three. Has the Government
14 met its burden of proof as to each such count
15 when considered separately and individually. Count
16 two and count three of the indictment are based
17 on title 26 of the United States code, Section
18 7206 (2) and title 18 of the United States code,
19 Section 2. Title 26 of the United States code
20 Section 7206 (2) implies in pertinent part:

21 "Any person who wilfully aids, or assists
22 in or procures, counsels or advises the preparation
23 or presentation under or in connection with any
24 matter arising under the IRS laws of a return,
25 affidavit, claim or other document which is

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fraudulent or is false as to any material matter whether or not such falsity or fraud is with knowledge or consent of the person authorized or required to present such return, affidavit, claim or document shall be guilty of an offense against the laws of the United States."

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As I have previously advised you, counts two and three of the indictment are also based on title 18 of the United States code, section 2.

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Aid an abet. In a case where a defendant is charged alone in a count of the indictment as to counts two and three herein, the guilt of that defendant may be established without proof that the accused personally did every act constituting the offense charged.

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Section two of title 18 of the United States code deals with the aiding and abetting of the commission of an offense against the laws of the United States. Section two provides in pertinent part as follows:

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"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal; whoever wilfully causes an act

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2 to be done which, if directly performed by him or
3 another, would be an offense against the United
4 States is punishable as a principal."

5 In other words, every person who wilfully
6 participates in a commission of a crime may be
7 found to be guilty of that offense. Participation
8 is wilful if done voluntarily and intentionally
9 and with the specific intent to do something the
10 law forbids or with the specific intent to fail
11 to do something the law requires to be done, that
12 is to say, with bad purpose either to disobey or
13 disregard the law.

14 Aid and abet defined. In order to aid and
15 abet another to commit a crime it is necessary that
16 the accused wilfully associate himself in some way
17 with the criminal venture and wilfully participate
18 in it as he would in something he wishes to bring
19 about, that is to say, that he wilfully seeks by
20 some act or omission of his to make the criminal
21 venture succeed.

22 An act or omission is wilfully done if
23 done voluntarily and intentionally and with the
24 specific intent to do something which the law
25 forbids or with the specific intent to fail to do

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something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission. Wilfully to cause criminal act defined. In order to cause another person to commit a crime a criminal act, it is necessary that the accused wilfully do or wilfully fail to do something which in the ordinary course of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature, or the ordinary habits of life results in the other person's either doing something the law forbids or failing to do something the law required to be done. An act or a failure to act is wilfully done if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose, either to disobey or disregard the

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Mere presence not sufficient. Mere presence at the scene of the crime and knowledge that the crime is being committed are not sufficient to establish that the defendant aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator. You are instructed as a matter of law in order to convict a defendant of aiding and abetting the commission of a substantive offense, the proof must establish that the crime in question was committed by someone, and that the person charged aided and abetted its commission.

It is not a prerequisite to the aider and abettor that the principal be convicted or even, in fact, identified. To determine whether a defendant aided and abetted the commission of an offense, you ask yourself these questions; did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his actions to make it succeed? If he did, then he's an aider and abettor.

Essential elements of the offense. The essential elements of the offense charged in

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count two of the indictment, each of which the

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Government must prove beyond a reasonable doubt

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first; that on or about the 21st day of January,

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1976, the defendant committed the act or acts of

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aiding or assisting in or procuring or counseling or

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advising, or causing the preparation, presentation

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of a false or fraudulent United States information

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return form 1099 as charged.

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Second: that the information form 1099 was

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fraudulent or false as to a material matter as

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charged.

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Third: that the defendant did such act or

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acts with knowledge that the material information he

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provided would cause the information return form

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1099 to be prepared and presented was false or

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fraudulent as charged;

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And fourth: that the defendant did such act

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or acts wilfully.

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Essential elements of the offense. The

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essential elements of the offense charged in count 3

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of the indictment, each of which the Government must

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prove beyond a reasonable doubt, are:

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First: that on or about the 27th day of

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January 1976, the defendant committed the act or

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acts of aiding or assisting in or procuring, or

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counseling or advising, or causing the preparation, presentation of a false or fraudulent United States information return, form 1099 as charged.

Second: that the information return form 1099 was fraudulent or false as to a material matter as charged.

Third: that the defendant did such act or acts with knowledge that the material information he provided which caused the information return form 1099 to be prepared and presented was false or fraudulent as charged and,

Fourth: that the defendant did such act or acts wilfully.

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged.

Always remember that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Ladies and gentlemen, you will note the indictment charges in each count that the offense was committed on or about a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the

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2 evidence in the case establishes beyond a reasonable
3 doubt that the offense was committed on a date
4 reasonably near the date alleged. You are in-
5 structed as a matter of law that the fact that the
6 United States may have subsequently discovered the
7 falsity, if you have found beyond a reasonable doubt
8 that there was a falsity of the return, and may have
9 been able by reason of that discovery to avoid a
10 monetary loss, is no defense to the charge contained
11 in the indictment. The Government need not prove
12 that there is a tax deficiency in order to establish
13 a violation of 7206 (2) of title 26 of the United
14 States code.

15 Definition. Please bear in mind the following
16 definitions in considering the essential elements of
17 the crime charged. Definition of a false information
18 return. A false United States information return
19 form 1099 is a return that was untrue when made and
20 was known to be untrue by the person making it, or
21 causing it to be made.

22 Definition of a fraudulent information
23 return. A fraudulent United States information
24 return form 1099 is a return made or caused to be
25 made with the intent to deceive.

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2 Definition of material matter. A matter is
3 material if it would have a tendency to influence
4 the IRS in the normal processing of the return
5 involved.

6 Definition of "knowingly."

7 "Knowingly." An act is done knowingly if
8 done voluntarily and intentionally and not because
9 of mistake or accident or other innocent reason. The
10 purpose of adding the word "knowingly" was to insure
11 that no one would be convicted for an act done
12 because of mistake or accident or other innocent
13 reasons.

14 Definition of "wilful to act."

15 An act is done wilfully if done voluntarily
16 and intentionally and with the specific intent to do
17 something the law forbids, that is to say, with bad
18 purpose either to disobey or to disregard the law.

19 Wilful to cause a criminal act defined. In
20 order to cause another person to commit a crime a
21 criminal act, it is necessary the accused wilfully
22 do or wilfully fail to do something which in the
23 ordinary performance of official duty, or in the
24 ordinary course of the business or employment of such
25 other person or by reason of the ordinary course of

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2 nature, or the ordinary habits of life results in
3 the other person's either doing something the law
4 forbids or failing to do something the law requires
5 to be done. An act or failure to act is wilfully
6 done if done voluntarily and intentionally and with
7 the specific intent to do something the law forbids,
8 or with the specific intent to fail to do something
9 the law requires to be done, that is to say, with
10 bad purpose either to disobey or disregard the law.

11 Definition of specific intent. Applicable to
12 both offenses charged in the indictment. The crimes
13 charged in this case are serious crimes which require
14 proof of specific intent before a defendant can be
15 convicted. Specific intent as the term implies
16 means more than the general intent to commit the
17 act. To establish specific intent the Government
18 must prove that a defendant knowingly did an act
19 which the law forbids, purposely intending to violate
20 the law. Such intent may be determined from all the
21 facts and circumstances surrounding the case. Intent
22 ordinarily may not be proved directly because there
23 is no way of fathoming or scrutinizing the operations
24 of the human mind, but you may infer the defendant's
25 intent from the surrounding circumstances. You may

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2 consider any statement made an act done or omitted
3 by a defendant and all other facts and circumstances
4 in evidence which indicate his state of mind. It is
5 ordinarily reasonable to infer that a person intends
6 natural and probable consequences of acts knowingly
7 done or knowingly committed.

8 Reasonable doubt. Now, there are in any case
9 and in this one two types of evidence from which a
10 jury may properly find a defendant guilty of a crime.
11 One is direct evidence, such as testimony of an eye
12 witness; the other is circumstantial evidence which
13 is proof of a chain of facts and circumstances
14 pointing to the commission of the offense. As a
15 general rule the law makes no distinction between
16 direct and circumstantial evidence, but simply
17 requires that before convicting a defendant, the
18 jury must be satisfied of the defendant's guilt
19 beyond a reasonable doubt from all the evidence in
20 the case.

21 A defendant is presumed innocent of the
22 crime, thus the defendant although accused, begins
23 the trial with a clean slate and no evidence against
24 him, and the law permits nothing but legal evidence
25 to be presented before a jury to be considered in

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support of any charge against the accused; so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case. It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act.

Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in most of your most affairs.

You, the jury, will remember, that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant.

The law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence, so if the jury views the evidence in the case as reasonably permitting

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either of two conclusions, one of innocence the other of guilt, you, the jury of course, should adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness; also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant.

You, the jury, may make common sense inferences from the proven facts. It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt and should be based upon all the evidence, the testimony of the witnesses, the documents offered in to evidence, and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or a conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case but in your

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2 consideration of the evidence, you are not limited
3 to the bald statements of the witnesses. On the
4 contrary, you are permitted to draw from the facts
5 which you found have been proved, such reasonable
6 inferences that seem justified in the light of your
7 own experience.

8 A reasonable doubt may arise not only from
9 the evidence produced but also from a lack of
10 evidence since the burden is upon the prosecution to
11 prove the accused guilty beyond a reasonable doubt
12 of every essential element of the crime charged.
13 A defendant has a right to rely on failure of the
14 prosecution to establish such proof.

15 Proof of knowledge and intent. Knowledge
16 and intent exist in the mind. Since it is possible
17 to look into a man's mind to see what went on, the
18 only way you have for arriving at a decision in these
19 questions is for you to take into consideration all
20 the facts and circumstances shown by the evidence,
21 including the exhibits, and to determine from all
22 such facts and circumstances whether the requisite
23 knowledge and intent were present at the time in
24 question.

25 Direct proof is unnecessary. Knowledge and

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intent may be inferred from all the surrounding circumstances. Evidence in the case, stipulations, statements and arguments of counsel are not evidence in the case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved. Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them; and all facts which may have been admitted or stipulations, and all applicable presumptions stated in these instructions.

If a lawyer asks a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. Statements by the lawyers are not evidence.

It was stipulated and agreed by and between the parties that at all times pertinent hereto, the name of the defendant was Daniel Perez. The name of the defendant was not Carlos Diaz.

The Court may take judicial notice of certain

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2 facts or events. When the Court declares it will
3 take judicial notice of some fact or event, you may
4 accept the Court's declaration as evidence and
5 regard as proof the fact or event which has been
6 judicially noted but you are not required to do so
7 since you are the sole judge of the facts, unless
8 you have been instructed otherwise.

9 Anything you may have seen or heard outside
10 the courtroom is not evidence and must be entirely
11 disregarded. You are to consider only the evidence
12 in the case, but in your consideration of the
13 evidence, you are not limited to the bald statements
14 of the witnesses. In other words, you are not
15 limited solely to what you see and hear as the
16 witnesses testified. You are permitted from facts
17 which you find have been proved such reasonable
18 inferences that you feel are justified in the light
19 of experience.

20 Credibility of witnesses. You, as jurors,
21 are the sole judges of the credibility of the
22 witnesses and the weight their testimony deserves,
23 and it goes without saying that you should scrutinize
24 all the testimony given, the statements under which
25 each witness has testified and every matter in

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2 evidence which tends to show whether a witness is
3 worthy of belief.

4 Consider each witness' intelligence, motive
5 and state of mind, and his demeanor and manner
6 while on the stand. Consider the witness' ability
7 to observe the matters as to which he has testified,
8 and whether he impresses you as having an accurate
9 recollection of these matters.

10 Consider also any relation either witness
11 may have to either side of the case and the extent
12 to which, if at all, each witness is either supported
13 or contradicted by other evidence in the case.

14 Inconsistencies or discrepancies in the
15 testimony of a witness or between the testimony of
16 different witnesses may or may not cause the jury to
17 discredit such testimony. Two or more persons
18 witnessing an incident or a transaction may see or
19 hear it differently an innocent misrecollection
20 like failure of recollection is not an uncommon ex-
21 perience.

22 In weighing the effect of a discrepancy
23 always consider whether it pertains to matters of
24 importance or unimportant detail, and whether the
25 discrepancy results from innocent error or intentional

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falsehood.

After making your own judgment you'll give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you could use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You use your good common sense as you do in your everyday experience, where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others, you use your common sense, your good judgment will say to you somehow or other, whatever they say does not appear to be truthful; that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likewise, your common sense should be used to determine the weight to be given the testimony of a witness. You take that same common sense into the jury room, you do not leave it outside.

In addition to what I've said, use your common sense as a test in exercising your good

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judgment and in determining whether or not this defendant is guilty of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what that interest may be and how great it is, and whether or not they have told you falsehoods. This is all for you to determine. Every witness' testimony must be weighed as to its truthfulness.

If you find any witness lied as to any material fact in the case, the law gives you certain privileges, one of those privileges is that you have a right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which was false, then the law allows you to take the portion which was true and weigh it and disregard those portions which were false; that again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all of the facts and circumstances in evidence to determine which of the witnesses are worthy of great credance.

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2 You may find that the testimony of a smaller number
3 of witnesses on one side is more credible than the
4 testimony of a greater number of witnesses on the
5 other side. You are not obliged to accept testimony
6 even though the testimony is uncontradicted and the
7 witness is not impeached. You may decide because of
8 the witness' bearing and demeanor or because of the
9 inherent improbability of his testimony, or for some
10 other reasons sufficient to you, that such testimony
11 is not worthy of belief.

12 The Government is not required to proved the
13 essential elements of the offense as defined in these
14 instructions by any particular number of witnesses.
15 The testimony of a single witness may be sufficient
16 to convince you beyond a reasonable doubt of the
17 existence of an essential element of the offense
18 charged. If you believe beyond a reasonable doubt
19 that the witness is telling the truth, all available
20 evidence need not be produced.

21 The law does not require the prosecution to
22 call as witnesses all persons who may have been
23 present at any time or place involved in the case,
24 or who may appear to have some knowledge of the
25 matters in issue at this trial; nor does the law

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2 require the prosecution to produce as exhibits all
3 papers and things mentioned in the evidence. However
4 in judging the credibility of the witnesses who have
5 testified, and in considering the weight and effect
6 of all evidence that has been produced, the jury may
7 consider the prosecutions' failure to call other
8 witnesses or produce other evidence shown by the
9 evidence to be in the case, to be in existence and
10 available.

11 The jury will always bear in mind the law
12 never imposes upon a defendant in a criminal case
13 the burden or duty of calling any witness or producing
14 any evidence, and no adverse inferences may be drawn
15 from his failure to do so

16 Identification of defendant. The evidence in
17 this case raised the question of whether the
18 defendant was in fact the criminal actor and nec-
19 essitates your resolving any conflict or uncertainty
20 in testimony on that issue. The burden of proof
21 is on the prosecution with reference to every
22 element of the crime charged, and this burden
23 includes the burden of proving beyond a reasonable
24 doubt the identity of the defendant as the
25 perpetrator of the crime charged. Identification

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2 may be made through the perception of any of the
3 witness' senses. It is not essential that the
4 witness himself be free from doubt as to the
5 correctness of his opinion. You as the jury may
6 treat the identification testimony as a statement of
7 fact by the witness.

8 1. The witness has the opportunity to
9 observe the accused.

10 2. If the witness is positive in his
11 identification. If after cross-examination his
12 testimony remains positive and unqualified, the
13 absence of any of these two conditions the witness'
14 testimony as to the identity must be received with
15 caution and scrutinized with care.

16 The credibility of accused as witness. A
17 defendant who wishes to testify is a competent
18 witness, and the defendant's testimony is to be
19 judged the same way as that of any other witness,
20 that is to say, it will for you to say remembering
21 the substance of his testimony, the manner in which
22 he gave it, the cross-examination and everything else
23 in the case, whether or not he told the truth.
24 Then again it is for you to remember, you have a
25 right to consider the interest the defendant has in

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2 the case as he places himself as a witness he stands
3 like any other witness.

4 As stated before, the law never imposes upon
5 a defendant in a criminal case the burden or duty
6 of calling any witnesses or producing any evidence.

7 Opinion evidence -- expert witness. The
8 rules of evidence ordinarily do not permit witnesses
9 to testify as to opinions or conclusions, an exception
10 to this rule exists as to those whom we call expert
11 witnesses, witnesses who by education and experience
12 have become expert in some art, science, profession
13 or calling, may state an opinion as to relevant
14 and material matters in which they profess to be
15 expert and may also state their reasons for the
16 opinion. You should consider the expert opinion
17 received in evidence in this case and give it such
18 weight as you may think it deserves. If you should
19 decide that the opinion of an expert witness is not
20 based upon sufficient education and experience, or
21 if you should conclude that the reasons given in
22 support of your opinion are not sound, or that the
23 opinion is outweighed by other evidence, you may
24 disregard the opinion entirely.

25 Evidence of handwriting. Where the genuine-

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ness of handwriting is an issue any proof or admitted
handwriting of a person may be produced in evidence
to be used as a specimen for comparison with the
handwriting in dispute.

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Witnesses claiming special qualifications as experts on handwriting. A witness in this case has testified as to certain handwriting in dispute. A handwriting expert may state his opinion as to whether documents or signatures in evidence were written by the same person, and whether they are genuine, disguised or altered by comparing the handwriting in dispute with the proven specimen.

You have a right to determine the weight to be given such expert testimony.

Testimony of Government officials. The probable truthfulness and believability of every witness is for you and for each of you to decide, that I have already instructed you. The fact that such witnesses come before you as Government agents should not in the least change your attitude in this respect. Their testimony does not deserve either greater or lesser believability simply because of their official status.

Whether you do or do not believe any witness must depend upon how truthful you trust that witness to be after you heard the testimony and formed your own conclusions as to the witness' believability.

Impeachment. Inconsistent statements or conduct. The testimony of a witness may be discredited or

Charge of the Court

impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of a witness and not to establish the truth of the statements.

It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached. If a witness is shown knowingly to testify falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you think it deserves.

An act or omission is knowingly done if done voluntarily and intentionally and not because of mistake or accident or other innocent reasons.

Objections and rulings. It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections. Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless

Charge of the Court

expressly stated, indicate any opinion as to the weight or effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of such evidence.

When the Court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely and draw no inference from the wording of it or speculate as to what the witness would have said had he been permitted to answer the question.

As you are aware, there has been a prior trial involving this matter. You should not concern yourselves at all with this fact. Your verdict here must be based solely on the evidence at this trial in accordance with all of the instructions you are now receiving.

Judging the evidence. There is no particularly different way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question, depending upon evidence presented to them. You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclina-

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Charge of the Court,

tions of human beings.

If an accused be proved guilty beyond a reasonable doubt, say so; if not so proved, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case. The Court never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The jury's recollection controls. If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Punishment. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon the defendant if convicted to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and



Charge of the Court

the evidence alone, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

Exclude sympathy and antipathy in reaching your verdict. You are not to be affected by sympathy or antipathy for any of the parties regardless of what the reaction of the parties or the public may be, whether it will please or displease anyone, be popular or unpopular or indeed any consideration outside the case as it has been presented to you in this courtroom.

You should consider only the evidence, both the testimony and the exhibits, find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts.

Your verdict will be determined by the conclusion thus reached, no matter who the verdict helps or hurts.

Unanimous verdict. Now, in this type of case there must be a unanimous verdict, that means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points amongst yourselves in order to determine in good conscience whether your fellow jurors' argument is one commensurate with yours

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Charge of the Court

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or whether at least you can with good conscience agree with him or her.

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You have no right to stubbornly or idly sit by and say, I am not talking to anyone, I am not going to discuss it, because people with common sense and the ability to reason must communicate, they must communicate their thoughts. So anything which appears in the record and about which one of you may not agree, talk it out amongst yourselves and then if you can't agree as to what is in the record, well, you can ask the Court to have that portion of the testimony read back to you. You may do so by knocking on the door and giving a note in writing to the US marshall, who will then present it to the Court and I will then bring you into the courtroom.

The forelady will preside over your deliberations and will be your spokesman here in court.

As to the form of verdict as to count 2, not guilty or guilty; as to count 3, not guilty or guilty.

At this time the alternates are discharged with the thanks of the Court. They may leave and go to the jury room and remove their belongings. They are discharged with the thanks of the Court.

You have to report on Wednesday, December 15th,

E

Charge of the Court

9:30 in the central jury room, Wednesday at 9:30.

I will send into the jury room for you to use during your deliberations all of the evidence, plus a copy of the two counts which you are to consider.

I will speak to the lawyers at the sidebar.

(Whereupon a sidebar conference was had.)

THE COURT: Are there any exceptions?

MS. SOLLEDER: You're going to send the exhibits in even if they don't ask for them?

Where your Honor said that the precise date on which the alleged crime was committed doesn't have to be very date, it should be on or around that time, these forms were either filled out on that date or they weren't, the jury can't guess.

MR. SANDS: On or about language is standard language.

THE COURT: I'll let the charge stand.

MS. SOLLEDER: I would ask that they not have the exhibits unless they request them.

THE COURT: I'll send it in.

Do you have a copy of the two counts?

MR. SANDS: We retyped it as count 1 and 2 and that was before the trial started, and I suggest that we use that.

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THE COURT: Do you have two?

Can you give me one?

Anything else?

MS. SOLLEDER: No.

(Whereupon sidebar conference was concluded.)

THE COURT: Swear in the marshalls.

(Whereupon the US Marshall was sworn in by the
Clerk of the Court.)

THE COURT: Give them all the evidence.

The jury may go out for deliberations.

MS. SOLLEDER: May we check the evidence before
it goes in?

(Whereupon jurors began deliberations.)

(Whereupon court stood in recess at this time.)

(After recess.)

THE COURT: Mark the note as a Court exhibit.

THE CLERK: Court exhibit 2 so marked.

THE COURT: Court exhibit 2 says:

"What is missing from forms 317, exhibit 8 and
exhibit 1? "

MR. SANDS: I believe that was the penalty.

THE COURT: That's a section of the law with the
penalty.

MR. SANDS: I believe at the prior trial there
was an agreement reached.

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1 THE COURT: I charged them on the law and penalty
2 is not for their consideration.

3 MS. SOLLEDER: I realize that ordinarily the
4 punishment is not for the jury, but since they have asked
5 the question about an exhibit which has been cut off,
6 I think the whole thing should be taken out or they
7 should be told the rest of the sentence.

8 THE COURT: I'll tell them what's missing.

9 MR. SANDS: Will you actually say what the
10 penalty was?

11 THE COURT: Section of the law concerning the
12 penalty. I charged them as to the law and the question
13 of penalty is not for their consideration.

14 Bring in the jury.

15 MS. SOLLEDER: My position is that the question
16 should be answered, they should be told what the rest
17 of that sentence is.

18 (Whereupon jurors entered the courtroom, are now
19 seated in the jury box.)

20 THE COURT: The question which was received from
21 the jury says:

22 "What is missing from form 317?"

23 This portion which was cut off is a section of
24 the law which has the penalty.

25 Now, the Court has charged you as to the law and

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10 1 the penalty or the punishment is actually not for the
2 jury's consideration, but this was a section of the law
3 on each of these exhibits that was cut off. You may
4 return for deliberation.

5 (Whereupon jurors were excused to continue
6 deliberation.)

7 MS. SOLLEDER: Since that is an exhibit and the
8 jury has asked a question as to what is missing from an
9 exhibit, it's the defendant's request that they be told
10 what was cut out of the exhibit. This has not been the
11 ordinary case where they are asking, suppose we convict,
12 what should be the penalty of the defendant.

13 I ask that they be told.

14 One of the jurors wanted to ask a question.

15 THE COURT: They could write it down. I don't
16 take questions from individual jurors and I stopped her,
17 and I didn't get any question.

18 MS. SOLLEDER: I wonder if they remember whether --

19 THE COURT: They were told two or three times in
20 the charge.

21 MR. SANDS: Again for the purpose of protecting
22 the record, I'm informed by Special Agent Levy, who
23 participated in the course of the first trial, that the
24 suggestion or request that the language that the jury
25 just posed, the last question, that was deleted from the

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA :

5 -against- :

6 DANIEL PEREZ, :

76 CR 351

7 Defendant. :
8 -----X

9
10 United States Courthouse
11 Brooklyn, New York

12 July 26, 1976
13 5:35 p.m.

14 Before:

15 HONORABLE HENRY BRAMWELL, U.S.D.J.
16

17
18
19 EXCERPT
20

21
22
23 PERRY AUERBACH
24 ACTING OFFICIAL COURT REPORTER
25

F-1

1 A p p e a r a n c e s

2 DAVID G. WRAGER, ESQ.
3 United States Attorney
4 for the Eastern District of New York

5 BY: ALLAN SLEPPIN, ESQ.
6 Assistant United States Attorney

7 HELENA PICHEL-SOLLEDER, ESQ.
8 Attorney for Defendant

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1 THE CLERK: Note from jury marked Court's
2 Exhibit No. 1.

3 THE COURT: Court's Exhibit No. 1 states:

4 "What is the procedure when the jury cannot
5 come to a unanimous decision?"

6 What do you want me to do?

7 MRS. SOLLEDER: Your Honor, they have been out
8 now three hours. I understand they were going to
9 make phone calls.

10 THE COURT: Yes. There was a note that came
11 in asking for phone calls, so I said let the Marshal
12 make whatever calls were necessary.

13 MRS. SOLLEDER: This is a very short case,
14 and they have been deliberating for three hours.

15 THE COURT: Do you want me to give them an hour?

16 MR. SLEPPIN: Yes.

17 MRS. SOLLEDER: I am not requesting that. I
18 could ask they be discharged as unable to agree.

19 MR. SLEPPIN: Your Honor, I submit --

20 THE COURT: Do you want to come back and retry
21 this case?

22 MRS. SOLLEDER: Not necessarily. No, your
23 Honor. I don't have the case with me, but I thought
24 there was another case subsequent to the Allen case
25 in the Second Circuit, and I used to carry it with me.

F-1

1 THE COURT: I said do you want to come back and
2 retry this case?

3 MRS. SOLLEDER: No, your Honor, I don't.

4 THE COURT: Well, that's what you are going to
5 have to do.

6 MRS. SOLLEDER: I would prefer not to, but
7 obviously I would not want the jury to think it has
8 to come to a decision.

9 THE COURT: Do you want me to read this file
10 that's in here? It reads, "I am going to ask that you
11 resume your deliberations in an attempt to return
12 a verdict. As I have told you, each of you must
13 agree to return a verdict. You have the duty to
14 consult with one another and to deliberate with a
15 view to reaching an agreement, if this can be done
16 without violence to individual judgment. Each juror
17 must decide the case for himself or herself, but only
18 after an impartial consideration of the evidence
19 with his fellow jurors, his or her fellow jurors.
20 During the course of your deliberations each of you
21 should not hesitate to re-examine his or her own
22 views and exchange his or her opinion if convinced
23 it is erroneous. No jurors, however, should surrender
24 his or her opinion, solely because of the opinion of
25 his or her fellow jurors or for the mere purpose of

1 returning a verdict." That's it.

2 What do you want me to do?

3 MRS. SOLLEDER: Let me discuss it with my client,
4 your Honor.

5 THE CLERK: Note from jury marked Court's
6 Exhibit No. 2.

7 THE COURT: I am going to read Court's Exhibit
8 No. 2 to you.

9 MRS. SOLLEDER: Are they coming out with any-
10 thing?

11 THE COURT: I am going to read Court's Exhibit
12 2 to you.

13 "Re: No. 1 and 2. Conceding that all the
14 information on the 1099 is accurate and correct, and
15 that all the information on the NYRA incorporated
16 Form No. 317 is in fact accurate and correct, other
17 than the signature which is conceded to be a forgery
18 authorized by the person whose name is used, to wit:
19 Don Carlos Diaz, can he be guilty of the last two
20 counts?"

21 Give it to Mrs. Solleder to read.

22 (Whereupon, the note was handed to Mrs. Solleder.)

23 MRS. SOLLEDER: Your Honor, I understand what
24 they are saying.

25 THE COURT: Whatever they say, that's on the

F-1

1 paper.

2 MRS. SOLLEDER: My position would be that they
3 have decided according to this note.

4 THE COURT: No, they haven't decided. They say
5 here they can't reach a verdict.

6 MRS. SOLLEDER: That was the first note, your
7 Honor.

8 THE COURT: Yes. What would you want me to
9 do?

10 MRS. SOLLEDER: This second note, to me, your
11 Honor, means that they have reached a decision.

12 THE COURT: No. They ask a question.

13 MRS. SOLLEDER: Except they may have made
14 decisions on certain factual issues in this case.

15 THE COURT: It would appear they may have made
16 a decision on certain factual decisions on the case,
17 but they haven't arrived at a verdict.

18 MRS. SOLLEDER: They are asking whether they
19 can arrive at a verdict. Your Honor, they have found --
20 your Honor, it seems to me that they are asking whether
21 under these facts they can find him guilty, and my
22 answer would be that the Court would have to instruct
23 them: "No."

24 THE COURT: What I am going to do is bring them
25 out and have the questions they wish to have re-asked

F-1

1 as to this note No. 2.

2 MRS. SOLLEDER: They have found, it seems to me,
3 whatever is on that form was not done intentionally,
4 and wilfully to violate the statute, and that would
5 be my position.

6 THE COURT: They will have to rephrase the
7 questions as to the Court Exhibit No. 2 so that the
8 Court can properly respond to what their questions
9 may be. I am going to bring them in.

10 MRS. SOLLEDER: My position is that they found
11 him not guilty by the fact they have found their --

12 THE COURT: That's your position. But the
13 Court is going to ask them to rephrase these questions,
14 as to what they may desire that the Court instruct
15 them to.

16 Bring in the jury.

17 (Whereupon, the jury entered the courtroom at
18 5:42 p.m.)

19 THE COURT: All right. The Court has received
20 the two notes. One is Court Exhibit No. 1, "What is
21 the procedure when the jury cannot come to a unanimous
22 decision?"

23 While we were considering that, Court Exhibit
24 No. 2 came out from the jury which says, "Re: Count
25 Nos. 1 and 2. Conceding that all the information on the

F - 1

1 1099 is accurate and correct, and that all the infor-
2 mation on the NYFA, incorporated, Form No. 317 is
3 in fact accurate and correct, other than the signature
4 which is conceded to be a forgery, authorized by the
5 person whose name is used, to wit, Don Carlos Diaz,
6 can he possibly be considered of the last two counts?"

7 The Court will request the jury to return as
8 to Court Exhibit No. 2 these questions, and to rephrase
9 those questions in short form so that the Court can
10 properly respond to them.

11 The jury can return.

12 (Whereupon, the jury left the courtroom at
13 5:44 p.m.)

14 THE COURT: Yes.

15 MRS. SOLLEDER: Your Honor, I have a request of
16 the Court. It seems to me that what the jury is saying,
17 "Can we find that he violated the statute if everything
18 was on --"

19 THE COURT: Let them rephrase it. This is one
20 big long sentence. Let them rephrase it in short form,
21 and I can answer it.

22 MRS. SOLLEDER: Instruct the jury they may not
23 find him guilty of the statute if they find what he put
24 on those forms was accurate and authorized.

25 THE COURT: I will charge the element of the

F-1

1 crime, if that's what you want me to do.

2 MRS. SOLLEDER: Find that he charged, they
3 cannot find that he --

4 THE COURT: Let's see what questions they come
5 out with, and then we will decide what we have to do.

6 (Whereupon, a recess was taken at 5:45 p.m.)

7 (Whereupon, the following took place in open
8 court at 6:00 p.m.)

9 THE COURT: Court's Exhibit No. 3 reads: "If
10 all the information on the 1099 is accurate, can Daniel
11 Perez still be guilty by virtue of the forged signature
12 on the WRA 317?"

13 I will hear what the attorneys have to say as
14 to this.

15 MRS. SOLLEDER: Your Honor, on behalf of the
16 defendant Perez, I would say that the Court must
17 instruct the jury that on that statement the answer
18 must be, "No. The charge here is a false and fraudulent
19 Form 1099, as to material matters."

20 The question of the jury is, "if we find."

21 THE COURT: No. The causing of a false and
22 fraudulent statement.

23 MRS. SOLLEDER: Yes, your Honor. We must have
24 a false and fraudulent --

25 THE COURT: A forged signature could have caused

F-1

1 this.

2 MRS. SOLLEDER: We must have a false and
3 fraudulent statement as to material matters. So they
4 say that they have found that the 1099 was not false
5 and fraudulent.

6 THE COURT: They don't say that.

7 MRS. SOLLEDER: Your Honor just read it. If the
8 information is true and accurate.

9 THE COURT: The word true is not on here. It
10 says, "accurate."

11 MRS. SOLLEDER: It can't be accurate from the
12 false and fraudulent --

13 THE COURT: The accuracy is the transition from
14 the 317 to the 1099. That's the accuracy.

15 MRS. SOLLEDER: And secondly, in the prior note
16 on which I placed my position on the record, they have
17 called for "if a forgery," but obviously they do not
18 mean a forgery, because they said, "an authorized
19 signature," and this man is not charged with forging
20 anybody's name.

21 (Continued on next page.)
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F-1

1 THE COURT: All right, Mr. Sleppin, what do
2 you have to say?

3 MR. SLEPPIN: I still think that the note is
4 somewhat ambiguous, and I will say that if they find
5 that -- and I will do it as to Count One, that's
6 Miguel Valles, the two and three are the same as to
7 Daniel Perez --

8 THE COURT: I am going to address myself to
9 this.

10 MR. SLEPPIN: I still can't answer that question.
11 If that means, your Honor, that they have found, just
12 for example, as to Count One that Miguel Valles --

13 THE COURT: It says here, "If all the information
14 on the 1099 is accurate." The only accuracy that there
15 can be is the accuracy of the transcribing from the
16 Form 317 to the 1099. The information that's on there.
17 That's the only accuracy there can be.

18 Now, they further say, "Can Daniel Perez still
19 be guilty by virtue of the forged signature on the
20 NYRA No. 317?"

21 MRS. SOLLEDER: Your Honor, may I add one thing?

22 THE COURT: Yes.

23 MRS. SOLLEDER: I think it's quite obvious that
24 if the jury thinks I signed somebody else's name, that
25 is a forgery, that is not that person's true signature,

F-1

1 but they have conceded that it was authorized. They
2 think a forgery is anybody signing a name, whether it
3 was authorized or not.

4 THE COURT: As to this part of the question,
5 "If all the information on the 1099 is accurate," when
6 they say, "accurate," do they mean it's a duplication
7 of the information from the 317 to the 1099 or when
8 they say, "accurate," do they mean truthful?

9 MRS. SOLLEDER: I would object to any further
10 questions. Charge them, find him not guilty.

11 THE COURT: This note is not ambiguous.

12 MRS. SOLLEDER: If you put the two notes together,
13 I don't think there is any ambiguity. They think
14 forgery means -- whether it's authorized or not, in
15 fact, forgery means you, yourself, do not sign your
16 name, and that is not a forgery.

17 THE COURT: Mr. Sleppin?

18 MR. SLEPPIN: Your Honor, my only point is, I
19 still think that the note is somewhat ambiguous.

20 THE COURT: That's why I would ask them if the
21 word "accurate" means duplication or truthful.

22 MR. SLEPPIN: That would shed some light on it.

23 THE COURT: Because at this point the note is
24 ambiguous.

25 MRS. SOLLEDER: I don't think the two taken

F-1

1 together are ambiguous as to what they have found.

2 THE COURT: I will ask the jury only that, and
3 let them go back and send the Court another note,
4 "Does accurate mean duplication or does it mean truth-
5 ful?"

6 MRS. SOLLEDER: I think that's only confusing.

7 THE COURT: That is the only problem.

8 MRS. SOLLEDER: Even if a verdict of guilty comes
9 in, my position is a coerced verdict. There were already
10 three questions, and at this point the last two notes
11 make sense.

12 THE COURT: We will bring out the jury and I
13 will ask them just for that last request. Bring out
14 the jury.

15 (Whereupon, the jury entered the courtroom at
16 6:08 p.m.)

17 THE COURT: The Court has received a note, and
18 this is Court Exhibit No. 3 which reads as follows:

19 "If all the information on the 1099 is accurate,
20 can Daniel Perez still be guilty by virtue of the
21 forged signature on the NYRA No. 317?"

22 Now, there's confusion as to the word "accurate."
23 Does that word "accurate" mean duplication or does it
24 mean truthful? In other words, the jury will have to
25 go back and consider, they may send the Court another

F-1

1 note as to whether the word "accurate" as used meant
2 a duplication or if it meant truthful. That's what
3 the Court would like to know. Thank you.

4 Whereupon, the jury left the courtroom at 6:10
5 p.m.

6 THE COURT: Should I send the note back to
7 them?

8 MRS. SOLLEDER: The last note that they had?

9 THE COURT: Yes.

10 MRS. SOLLEDER: May I see it?

11 (Whereupon, the note was handed to Mrs. Solleder.)

12 MRS. SOLLEDER: Yes. I think it might help them.

13 THE COURT: Give it back. All right. We will
14 send it back.

15 (Whereupon, the note was brought into the jury
16 room.)

17 THE COURT: They say the word is truthful.
18 Bring out the jury.

19 THE CLERK: The last note from the jury was
20 marked as Court's Exhibit No. 3.

21 Note from jury marked Court's Exhibit No. 4.

22 (Whereupon, the jury entered the courtroom at
23 6:13 p.m.)

24 THE COURT: The Court Exhibit No. 4 has the word
25 "truthful" on it, and so the question would read, "If

F-1

1 all the information on the 1099 is truthful, can Daniel
2 Perez still be guilty by virtue of the forged
3 signature on the MYRA No. 317," and it would be a
4 question of fact for the jury to decide, in light of
5 the testimony and the evidence which is before the
6 Court, as to whether or not Daniel Perez can so be
7 found guilty. It's a question of fact for the jury.
8 The jury will return for deliberation.

9 (Whereupon, the jury left the courtroom at 6:15
10 p.m.)

11 MRS. SOLLEDER: Your Honor, I would just like
12 to place on the record that I think the question of
13 fact was decided by that last answer, that the state-
14 ment was truthful as a matter of law. If the informa-
15 tion on the 1099 was truthful, the jury cannot find
16 him guilty as a matter of law.

17 THE COURT: They can do anything they wish. I
18 didn't inject myself. I left it up to them. They still
19 have that one.

20 MRS. SOLLEDER: It's a question of law now, if
21 the information on the 1099 --

22 THE COURT: No. It's not. It's a question of
23 fact. That's what I gave them, and that's exactly the
24 Court's position.

25 MRS. SOLLEDER: I have an exception under the

F-1

1 Court's rules.

2 (Whereupon, a recess was taken until 6:25 p.m.)

3 THE COURT: How late do you wish to go with this
4 this evening?

5 MRS. SOLLEDER: You mean the jury hasn't reached
6 a verdict?

7 THE COURT: No. The jury hasn't reached a
8 verdict.

9 MRS. SOLLEDER: I would ask your Honor instruct
10 them on the elements of faulty --

11 THE COURT: I am not going to instruct them on
12 anything they don't ask for. I am not going to take it
13 on the Court's prerogative to instruct them on anything.
14 The jury hasn't reached a verdict. How late would you
15 want me to go this evening?

16 MRS. SOLLEDER: My position is that they have
17 reached a verdict.

18 THE COURT: When did they reach a verdict?

19 MRS. SOLLEDER: They said, "If we find the
20 statement truthful."

21 THE COURT: I didn't get into it, and whatever
22 the verdict is is all right with me.

23 MRS. SOLLEDER: The verdict cannot stand if it's
24 a guilty verdict, in view of the fact they have found
25 as I told your Honor.

F-1

1 THE COURT: Listen, it will stand either way
2 with me, whatever the verdict is. I am not getting into
3 this thing. I am telling you what I can't do.
4 Whatever they say is all right with me.

5 MRS. SOLLEDER: It's a question of law.

6 THE COURT: It's not a question of law as far
7 as I am concerned. It is a question of fact for this
8 jury.

9 MR. SLEPPIN: Your Honor, in answer to your
10 question, I will stay as late as the Court wishes.

11 THE COURT: We will see what the jury does then.

12 MRS. SOLLEDER: I take no position. I have made
13 my position clear on the record.

14 THE COURT: You don't have to take any position.
15 Just stay around.

16 MRS. SOLLEDER: Your Honor, what was the note
17 from the jury?

18 THE COURT: There was no note. I just came out.
19 That's all.

20 MRS. SOLLEDER: I thought there was a note.
21 I am sorry.

22 (Whereupon, a short recess was taken until 7:20
23 p.m.)

24 THE COURT: Come to order and be seated.

25 THE CLERK: Note from jury marked Court's Exhibit

F-1

1 No. 5.

2 THE COURT: This note says, "We are at a dead-
3 lock. What now?"

4 I will see if they want to come back tomorrow
5 and continue.

6 MRS. SOLLEDER: Your Honor, I would request
7 instructions now on the law.

8 THE COURT: Instructions on the law, as to what?

9 MRS. SOLLEDER: As to the elements of the
10 offense and the facts that the 1099 --

11 THE COURT: I will see if they want to continue
12 or if they want to come back tomorrow. Bring in the
13 jury.

14 (Whereupon, the jury entered the courtroom at
15 7:40 p.m.)

16 THE COURT: Court's Exhibit No. 5 from the jury
17 says, "We are at a deadlock. What now?" Do you want
18 to come back tomorrow and continue deliberations?

19 THE JURY: Yes.

20 THE COURT: Tomorrow?

21 THE JURY: Yes.

22 THE COURT: While you are away from the court-
23 room, please do not discuss the case with anyone on
24 or off the jury. The only place that you can discuss
25 this case is in the jury room when all the members are

F-1

1 present. So tomorrow, tomorrow you can return and we
2 will start at 10 o'clock. You will assemble in the
3 jury room, and then I will bring you into court, and
4 then you will go back and deliberate. But don't
5 deliberate before you have been in the court and go
6 back into the jury room. Please, do not discuss the
7 case with anybody on or off the jury. Not until
8 everyone is here. Then you can deliberate. All right.
9 The jury may leave for the evening. Ten o'clock
10 tomorrow morning.

11 (Whereupon, the jury left the courtroom at
12 7:42 p.m.)

13 THE COURT: Is there anything the attorneys wish
14 to say?

15 MR. SLEPPIN: No, your Honor. The Government has
16 nothing to say, your Honor.

17 MRS. SOLLEDER: Your Honor knows my position
18 about this case.

19 THE COURT: What is your position?

20 MRS. SOLLEDER: My position is that they have
21 reached a decision as to the truthfulness of the 1099
22 statement, which is the only charge in this case, and
23 that therefore the Court should have directed a verdict
24 of acquittal.

25 THE COURT: That's your position?

F-1

1 MRS. SOLLEDER: Yes, your Honor.

2 THE COURT: Anything else?

3 MRS. SOLLEDER: My position is that there should
4 not be a return tomorrow for them to further deliberate.

5 THE COURT: Well, they are coming back. You are
6 to be here at 10:00 tomorrow morning, and we will
7 continue.

8 MRS. SOLLEDER: I would like to copy the notes
9 from the jury. May I?

10 THE COURT: You can do that tomorrow.

11 MRS. SOLLEDER: All right.

12 THE COURT: Good night.

13 MR. SLEPPIN: Good night.

14 MRS. SOLLEDER: Good night.

15 (Whereupon, court was adjourned at 7:45 p.m.
16 until July 17, 1976, at 10:00 a.m.)

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA :

5 -against- : 76 CR 351

6 DANIEL PEREZ, :

7 Defendant. :

8 -----x

9

10 United States Courthouse
11 Brooklyn, New York

12 July 27, 1976
13 10:00 a.m.

14

15 B e f o r e :

16 HONORABLE HENRY BRAMWELL, U.S.D.J.

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PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

F-2

1 Appearances:

2 DAVID G. TRAGER, ESQ.
3 United States Attorney
4 for the Eastern District of New York

5 BY: ALLAN SLEPPIN, ESQ.
6 Assistant United States Attorney

7 HELENA PICHEL-SOLLEDER, ESQ.
8 Attorney for Defendant

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1 MR. SLEPPI : Good morning, your Honor.

2 THE COURT: Good morning. I'm going to bring
3 up the jury and I'm going to reread the essential
4 elements of each of the counts and tell the jury if
5 they fail to find any element as to any count, then
6 they must acquit.

7 MRS. SOLLEDER: May I be heard.

8 THE COURT: Sure.

9 MRS. SOLLEDER: I have a specific request,
10 your Honor, to wit: "I charge you that if you have found
11 that the 1099 statement was truthful, and if you find
12 that Danny Perez signed the names Carlos Diaz and
13 Miguel Valles to the identification form with
14 authorization, such signing would not constitute either
15 forgery or a false statement, under this statute, and
16 you must then render a verdict of not guilty.

17 On the other hand, if you have found that the
18 1099 statement was false, then before you may convict
19 Danny Perez you must find the following:"

20 And then the Court would go on and give them the
21 elements of the aiding and assisting, counseling, that
22 the statement was false when it was made; it was
23 wilfully and knowingly made, that it was false as to
24 a material matter, that it was made with intent to
25 violate the statute.

F-2

1 Your Honor, my position is that I think that the
2 general instructions are not going to answer the
3 question which, in my opinion, the jury wants answered,
4 which is assuming that everything that was stated in
5 the 1099 was true, assuming everything on the I.D.
6 form was true, does the fact that the I.D. form, of
7 that literal prohibition against any but one signing
8 it constitute a false statement, and I think they want
9 to know whether the mere signing by Danny of the name
10 "Carlos," and "Miguel," with authorization, constitutes
11 a false statement under the statute, and, your Honor,
12 I think in the interest of justice, and the Government
13 should express its opinion as to the law on that.

14 THE COURT: Mr. Sleppin?

15 MR. SLEPPIN: Well, your Honor, at this point
16 I do object to any additional instructions. I think
17 that the jury has had a nice night's sleep.

18 THE COURT: What about the essential element?

19 MR. SLEPPIN: No objection.

20 THE COURT: Do you have any objection to the
21 reading of the essential elements of the three counts?

22 MRS. SOLLEDER: It should be pinpointed to if
23 they have found that the 1099 was not truthful. If
24 they have found it truthful, there is no need to read
25 the element any more, and I don't think it is going

F-2

1 to be the help. I have been asking this of the
2 Government throughout the case, and I really think the
3 Government should state its position now. Do you
4 think that the mere signing of the names by Danny
5 constitutes a violation of this statute? I think
6 Mr. Sleppin should state to the Court what his position
7 is with respect to that.

8 THE COURT: He doesn't necessarily have to state
9 his position, because that's not what's before the
10 Court. What is before the Court now is the -- what
11 the jury must get for use during its deliberations.
12 As far as your additional request that you made this
13 morning, that is denied.

14 MRS. SOLLEDER: Your Honor, I think the problem
15 is not with the element of the time, but with the
16 signing of the name.

17 THE COURT: You must put everything on the
18 record that you wish to.

19 MRS. SOLLEDER: Your Honor --

20 THE COURT: Ready to proceed?

21 MRS. SOLLEDER: Yes, your Honor. But my position
22 is on the record.

23 THE COURT: All right. Bring in the jury.

24 (Whereupon the jury entered the courtroom at
25 10:16 a.m.)

1 THE COURT: Good morning, ladies and gentlemen.
2 Because of the questions that the jury posed last night,
3 the Court at this time intends to go over the essential
4 elements of the offense for each of the counts, and
5 to repeat these for your edification so that perhaps
6 you can understand what is before the Court.

7 Now, the essential elements of the offense
8 charged in Count One of the indictment, each of which
9 the Government must prove beyond a reasonable doubt
10 are first:

11 That, on or about the 24th day of November 1975,
12 the defendant committed the act or acts of aiding or
13 assisting in or procuring in or counseling or advising
14 or causing the preparation and presentation of a false
15 or fraudulent United States Information Return Form
16 1099 as charged.

17 Second, that the Information Return Form 1099
18 was fraudulent or false as to a material matter as
19 charged.

20 Third, that the defendant did such act or
21 acts with knowledge that the Information Return Form
22 1099 was false or fraudulent as charged; and

23 Fourth, that the defendant did such act or
24 acts wilfully. The essential elements of the offense.
25 The essential elements of the offense charged in Count

1 Two of the indictment, each of which the Government
2 must prove beyond a reasonable doubt are first:

3 That on or about the 21st day of January 1976
4 the defendant committed the act or acts of aiding or
5 assisting in or procuring in or counseling or advising
6 or causing the preparation or presentation of a false
7 or fraudulent Information Form 1099 as charged.

8 Second, that the Information Return Form 1099
9 was fraudulent or false as to a material matter as
10 charged.

11 Third, that the defendant did such act or
12 acts with knowledge that the Information Return Form
13 1099 was false or fraudulent as charged; and

14 Fourth, that the defendant did such act or acts
15 wilfully.

16 Essential elements of the offense. The essen-
17 tial elements of the offense charged in Count Three of
18 the indictment, each of which the Government must prove
19 beyond a reasonable doubt are first:

20 That on or about the 27th day of January 1976,
21 the defendant committed the act or acts of aiding or
22 assisting in or procuring or counseling or advising
23 or causing the preparation and presentation of false
24 or fraudulent United States Information Return Form
25 1099 as charged.

E-2

1 Second, that the Information Return Form 1099
2 was fraudulent or false as to a material matter as
3 charged.

4 Third, that the defendant did such act or acts
5 with knowledge that the Information Return Form 1099
6 was false or fraudulent as charged; and

7 Fourth, that the defendant did such act or acts
8 wilfully.

9 If you fail to find any element in each of the
10 Counts separately, then you must acquit the defendant.
11 The jury may return and deliberate.

12 (Whereupon, the jury left to continue its
13 deliberations at 10:20 a.m.)

14 THE COURT: Yes, Mrs. Solleder?

15 MRS. SOLLEDER: Your Honor, I was just going
16 to ask if the Court would ask the jury whether there
17 was any specific information that they wanted the
18 Court to answer.

19 THE COURT: We will see what the jury requests
20 or what the jury wishes or what comes out of the
21 jury deliberations. That's what we will do. The
22 request that you made previously would only serve to
23 confuse the jury, and that is why I denied your request.

24 Thank you. All right, we have other cases I
25 have to take care of.

1 MRS. SOLLEDER: May I have those Court exhibits
2 to copy the notes, please?

3 THE COURT: What I can do, I can have my Clerk
4 Xerox that for you.

5 MRS. SOLLEDER: Yes. Thanks a lot, Judge.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, ;

-against- ;

DANIEL PEREZ, ;

Defendant. ;

76-CR-351

-----x

United States Courthouse
Brooklyn, New York

July 27, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

HENRI LeGENDRE
ACTING OFFICIAL COURT REPORTER

F-3

APPEARANCES:

DAVID G. TRAGER, ESQ.
United States Attorney

BY: ALLAN SLEPPIN, ESQ.
Assistant U.S. Attorney

HELENA FICHEL-SOLLEDER, ESQ.
Attorney for Defendant

F-3

1 THE COURT: Ready.

2 MR. SOLLEDER: Yes, your Honor.

3 THE COURT: Bring in the jury.

4 (Whereupon the jurors were seated in the
5 jury box.)

6 THE COURT: Court Exhibit No. 6. "Could the
7 jury hear the minutes re: The search for Diaz."

8 Mr. LeGendre will read those minutes to you.

9 Court Exhibit 7. The question which the jury
10 has placed on this exhibit is:

11 "If no information on the 1099 in counts two
12 and number three is incorrect can these 1099's be
13 false and fraudulent?" And the answer is no.

14 (Whereupon the reporter read back the minutes
15 relating to Exhibit No. 6.)

16 THE COURT: The jury may return for delibera-
17 tions.

18 (Whereupon, the jurors were excused to con-
19 tinue deliberating.)

20 MS. SOLLEDER: May I see the note, Court
21 Exhibit 6?

22 I understand that they were just asking for
23 testimony respecting Carlos Diaz but the reporter
24 read about Calona Park which had nothing to do
25 with Carlos Diaz.

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1 We didn't have a chance to consult with the
2 reporter what minutes were to be read.

3 THE COURT: Whatever he's read, he's read,
4 and if he gave them a little more than they asked
5 for I don't think there is a problem.

6 MS. SOLLEDER: It was ~~the~~ testimony as to
7 Diaz.

8 MR. SLEPPIN: There were more questions,
9 especially Special Agent Levy on cross-examination
10 by Ms. Solleder. I think he covered the direct.

11 MS. SOLLEDER: People talking from the other
12 side of the door, or that sort of thing was not
13 read.

14 THE COURT: If the jury has another question
15 we'll see what that is.

16 MS. SOLLEDER: I would ask that be read,
17 that's what they asked for.

18 I'd like to go over it with the reporter,
19 the search for Carlos Diaz.

20 THE COURT: Go over it with him.

21 (Whereupon the Court stood in recess.)

22 (After recess.)

23 THE COURT: Bring in the jury.

24 (Whereupon, jurors reentered the courtroom,
25 are now seated in the jury box.)

1 THE COURT: Ladies and gentlemen, the
2 attorneys have gone over the record with the
3 reporter, there is some additional transcript that
4 must be read to you concerning the search for
5 Diaz, so the reporter will read that to you.

6 (Whereupon, reporter read back testimony as
7 requested.)

8 THE COURT: Anything further? The jury may
9 return for deliberations. Thank you.

10 (Whereupon, the Court stood in recess.)

11 (After recess.)

12 MR. SLEPPIN: Your Honor, I believe the
13 earlier notes were ambiguous and it was not until
14 note number seven came out was there a clear note.
15 I think your Honor was correct in your rulings and
16 correct in your ruling as to note number seven,
17 saying, no, they couldn't convict unless they found
18 that all the information on the 1099 was correct;
19 and that's all, your Honor.

20 THE COURT: This question on this exhibit
21 "is the thoroughness of the Government's search for
22 Carlos Diaz a fact to dispute and if so, how much
23 weight is to be given to it by the jury?"

24 MS. SOLLEDER: That's sufficient to create a
25 reasonable doubt as to the existence of Carlos Diaz.

T-3

1 THE COURT: That will be the answer. Bring
2 the jury in.

3 (Whereupon, jurors reenter the courtroom,
4 are now seated in the jury box.)

5 THE CLERK: Note from jury marked Court
6 Exhibit No. 8.

7 THE COURT: I hadn't gotten this question
8 when you were out here last time. This is Court
9 Exhibit 8. "Is the thoroughness of the Government's
10 search for Carlos Diaz a fact to dispute and if so
11 how much weight is to be given to it by the jury."

12 Well, this is all a question of fact for the
13 jury to determine as to whether or not Carlos Diaz
14 did or did not exist. This is all a question of
15 fact for the jury.

16 The jury may return for deliberations.

17 (Whereupon, the jurors were excused to con-
18 tinue deliberating.)

19 THE COURT: Anything further?

20 MS. SOLLEDER: I've requested the Court to
21 tell them that it is in dispute.

22 THE COURT: I told them it's in dispute. I
23 told them it's up to them to determine whether or
24 not as a fact he did or did not exist.

25 MS. SOLLEDER: I hope they understand it is

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1 in dispute.

2 (Whereupon the Court stood in recess.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
-against- : 76 CR 351
DANIEL PEREZ, :
Defendant. :
-----X

United States Courthouse
Brooklyn, New York
July 27, 1976
3:25 P.M.

B e f o r e :
HONORABLE HENRY BRAMWELL, U.S.D.J.

MICHAEL J. MIELE
OFFICIAL COURT REPORTER

F-4

1
2 A p p e a r a n c e s:

3 DAVID G. TRAGER, ESQ.
4 United States Attorney
5 for the Eastern District of New York

6 By: ALAN SLEPPIN, ESQ.,
7 Assistant United States Attorney

8 HELENA PICHEL-SOLLEDER, ESQ.
9 Attorney for Defendant

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F-4

1 (At 3:30 P. M., the following occurred out of
2 the jury.)

3 THE CLERK: Note from jury marked Court
4 Exhibit Number 3.

5 THE COURT: The note says we would like a review
6 of our messages to the Court and the Judge's comments
7 on same.

8 The only one that the Court answered, gave any
9 response to, was Court Exhibit 7 and the answer to
10 that was: "No."

11 I will go over them. I will tell them the
12 response is to that one --

13 MS SOLLEDER: I will ask you to answer "no"
14 to number 2.

15 THE COURT: They want my response.

16 MS. SOLLEDER: You never responded to note
17 number 2.

18 It asked whether he could be considered guilty
19 and you didn't respond to that question.

20 THE COURT: Number 2 was confused and made no
21 sense and was illogical.

22 MS. SOLLEDER: They still asked the question.

23 THE COURT: I will give them the same response
24 I gave before.

25 MS. SOLLEDER: That is a question of law.

E-4

1 THE COURT: I will tell them there was no
2 response to note number 2.

3 MS. SOLLEDER: Would you ask them?

4 THE COURT: No. I will not change or alter
5 the responses.

6 MS. SOLLEDER: Would ask them if they want a
7 further repsonse?

8 I think that is what is holding this jury up,
9 your Honor, and that is whether the signature is a
10 forgery.

11 THE COURT: That is responded to in number 7
12 and number 2 is a confusion of different ideas and
13 the Court will not respond to it.

14 MS. SOLLEDER: Number 7 has nothing to do with
15 the signature and I did form --

16 MR. SLEPPIN: I submit Mrs. Solleder is asking
17 you to enter into the jury's deliberations. They
18 crystalized their question in number 7 and you answered,
19 no.

20 THE COURT: The second part is a re-reading
21 of the Court's message to the jury before our starting
22 of our deliberations, to wit, the four points contained
23 in the counts.

24 I will read only one time the four elements
25 of the offense and I will give them the different

F-4

1 dates for each count.

2 MS. SOLLEDER: That relates solely to the 1099
3 and the jury wants to find out if the signature on
4 the 317 constitutes a false statement. I think they
5 have made their mind up -- I think they have made
6 that clear by number 7 where they say the information
7 on 1099 is accurate. They want to know whether the
8 signature on 317 authorized, whether he could be
9 found guilty of this statute and --

10 MR. SLEPPIN: I submit again that she is asking
11 you to speculate.

12 THE COURT: All right.

13 Bring the jury in.

14 (The jury entered the courtroom at 3:45 P. M.)

15 THE COURT: This is Court Exhibit number 9 and
16 the first part requests -- well it says we would like
17 a review of our messages to the Court and the judge's
18 on same.

19 Court Exhibit number 1, what is the procedure
20 when the jury cannot come to a unanimous decision.

21 I don't think there is any response to that.

22 Court Exhibit 2, re count 1 and 2, conceding
23 that all the information on the 1099 is accurate and
24 correct, and that all the information on NYRA Form
25 Number 317 is in fact accurate and correct, other than

1 the signature, which is conceded to be a forgery
2 authorized by the person whose name is used, to wit,
3 one Carlos Diaz, can he possibly be considered guilty
4 of the last two counts.

5 There was no response by the Court to this
6 because there were too many ideas within the one
7 request.

8 Court Exhibit 3, if all the information on
9 the 1099 is accurate can Daniel Perez be guilty by
10 virtue of the forged signature on NYRA Form 317 and
11 the Court did not respond.

12 Court Exhibit 4, the word truthful, which was
13 to be substituted for the word accurate and the Court
14 did not respond to that.

15 Court Exhibit number 5, we are at a deadlock.
16 What now?

17 Court Exhibit number 6, can the jury hear the
18 minutes re the search for Diaz.

19 Court Exhibit number 7, if no information on
20 the 1099 is in counts 2 and 3, is incorrect, can
21 these 1099s be false and fraudulent, and the Court's
22 answer to that was, no.

23 Court Exhibit number 8, is the thoroughness
24 of the government's search for Carlos Diaz a fact to
25 dispute; if so, how much weight to be given to it by

F-4

1 the jury. There was no response by the Court to that.

2 That ends the first part of the Court Exhibit 9.

3 Now, the second part, a rereading of the
4 Court's message before our starting deliberations
5 this morning, to wit, the four points contained in
6 the counts. I will read the essential elements of
7 the offense and they are the same for all three counts,
8 except that you are to consider each count separately
9 and individually, and I will just give you the dates
10 for the other two counts.

11 The essential elements of the offense charged
12 in count 1 of the indictment, each of which the govern-
13 ment must prove beyond reasonable doubt are, first:
14 that on or about the 24th day of November 1975 the
15 defendant committed the act or acts of aiding or
16 assisting in or procuring or counseling or advising
17 or causing the preparation or presentation of a
18 false or fraudulent United States Information Return
19 Form 1099 as charged; second, that the Information
20 Return form 1099 was fraudulent or false as to
21 material matter as charged; three, that the defendant
22 did such act or acts with knowledge that the Informa-
23 tion Return form 1099 was false or fraudulent as
24 charged and fourth, that the defendant did such act
25 or acts wilfully.

F - 4

1 In count 2, the date is January 21, 1976 and
2 the elements are exactly the same and that count is
3 to be considered separately and individually.

4 In count 3, the date is January 27, 1976, and
5 the elements of the offense are exactly the same and
6 that count is to be considered separately and indivi-
7 dually.

8 The jury may return for deliberations.

9 (The jury withdrew from the courtroom at 3:40
10 P. M.)

11 (At 3:55 P. M., out of hearing of the jury.)

12 THE COURT: Court's Exhibit number 10 reads,
13 can we have a copy in the jury room of all four points.

14 That would be two pages of the essential
15 elements of the offense and the Court will give those
16 two pages to the jury to use pursuant to this request.

17 Bring in the jury.

18 MS. SOLLEDER: I didn't put this on the record.
19 May I request the Court answer requests number 2 and 3.

20 THE COURT: I did not answer it originally. I
21 did exactly what I did before.

22 MS. SOLLEDER: Would you ask them whether they
23 want further answers.

24 THE COURT: They only asked me for responses
25 which was what I gave them.

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1 MS. SOLLEDER: Which was no answer. Will you
2 ask them if they want any further answers.

3 THE COURT: No.

4 (The jury entered the courtroom at 4:00 P. M.)

5 THE COURT: Court Exhibit number 10 from the
6 jury is: can we have a copy in the jury room of all
7 four points and that is two pages. I am giving you
8 the copy as to the essential elements of the offense
9 for counts 1 and 2. As you know it is January 21,
10 1976 and count 3 is January 27, 1976 and those dates
11 you will also find on the indictment.

12 Here is the copy. Give this to the jury.

13 The jury may return for deliberations.

14 (The jury withdrew from the courtroom at 4:01
15 P. M.)

16 (Out of hearing of the jury.)

17 MS. SOLLEDER: I object and except to the
18 elements of the offense going in on the ground that
19 I think it will further serve to confuse the jury,
20 and I think there is only one question they want
21 which the Court refuses to answer, most respectfully.

22 MR. SLEPPIN: I have stated my position and
23 that is what seems to be crystal clear to me that
24 Mrs. Solleder is very confusing.

25 MS. SOLLEDER: At some point, the government

F-2

1 should place their legal position on the record. It
2 is most unfair to the Court and counsel that the
3 government refuses to state on the record what would
4 constitute a violation of the statute, assuming that
5 everything is accurate and truthful on the forms.

6 (At 4:55 P. M., out of hearing of the jury.)

7 THE CLERK: Note from the jury marked Court
8 Exhibit number 11.

9 THE COURT: Court Exhibit number 11.

10 It says, we are hopelessly deadlocked in all
11 honest attempts to try to judge this case.

12 Bring in the jury.

13 (The jury entered the courtroom at 4:56 P. M.)

14 THE COURT: I had a judge's meeting and this
15 is why you were delayed in getting back into the
16 courtroom.

17 Court Exhibit number 11 says, your honor, we
18 are hopelessly deadlocked in all honest attempts in
19 trying to judge this case.

20 Has the jury arrived at a verdict as to any
21 count in the indictment?

22 THE FOREMAN: Yes. The first count in the
23 indictment unanimously agreed upon and it was not
24 guilty.

25 THE COURT: Count number 1 is unanimously not

F 4

1 guilty?

2 THE FOREMAN: Yes.

3 THE COURT: But what about the other two?

4 THE FOREMAN: We co ldn't arrive at it.

5 THE COURT: Hopelessly deadlocked?

6 THE FOREMAN: Yes.

7 (Side bar discussion out of hearing of the
8 jury.)

9 MS. SOLLEDER: I request that the Court ask
10 them whether they are deadlocked on the facts or
11 on the law they are to apply.

12 THE COURT: All right.

13 (In hearing of the jury.)

14 THE COURT: Are you deadlocked as to the facts
15 or the law that is to be applied?

16 Is it the facts?

17 THE FOREMAN: Yes, Your Honor. The facts.

18 THE COURT: All right.

19 Is it the facts or the law?

20 THE FOREMAN: The facts and the way the
21 indictment was worded.

22 (Out of hearing of the jury at side bar as
23 follows.)

24 MS. SOLLEDER: I would renew my request.

25 THE COURT. Do you want me to give them an

F-4

1 Allen charge?

2 MS. SOLLEDER: I request that you ask them if
3 the answers to notes 2 and 3 would help them reach
4 a decision.

5 THE COURT: That is denied.

6 MS. SOLLEDER: Yes, I would like the Allen
7 charge.

8 THE COURT: The short one I read yesterday.

9 MS. SOLLEDER: About trying to get together?

10 MR. SLEPPEN: Is this the appropriate time
11 to poll the jury?

12 THE COURT: We will wait for that.

13 MS. SOLLEDER: I would ask for the long charge,
14 Your Honor.

15 Maybe I should look at the whole thing.

16 THE COURT: All right.

17 MS. SOLLEDER: Yes, Your Honor.

18 THE COURT: All right.

19 (In hearing of the jury.)

20 THE COURT: Ladies and gentlemen of the jury,
21 the attorneys have requested that I give you a
22 supplemental instruction when jurors fail to agree.

23 I will give you this instruction and after
24 that you can deliberate further and see if you can
25 reach a verdict in the case as to counts 2 and 3.

F-4

1 Now, the Court wishes to suggest a few
2 thoughts which you may desire to consider in your
3 deliberations along with the evidence in the case
4 and all the instructions previously given.

5 This is an important case. The trial has been
6 expensive in time and effort and money to both the
7 defense and prosecution. If you should fail to
8 agree on a verdict, the case is left open and undecided.

9 Like all cases, it must be disposed of some-
10 time. There appears no reason to believe that another
11 trial would not be costly to both sides, nor does
12 there appear any reason to believe that the case can
13 be tried again by either side better or more exhaust-
14 ively than it has been tried before you.

15 Any future jury must be selected in the same
16 manner and from the same source as you have been
17 chosen.

18 There appears no reason to believe that the
19 case would ever be submitted to twelve men and women
20 more conscientious, more impartial or more competent
21 to decide it or that more or clearer evidence could
22 be produced on behalf of either side. Of course,
23 these things suggest themselves upon brief reflection
24 to all of us who have sat through this trial. The
25 only reason they are mentioned now is because some

F-4

1 of them may have escaped your attention which must
2 be fully occupied up to this time in reviewing the
3 evidence in the case. They are matters which along
4 with others and more obvious ones perhaps remind
5 use how desirable it is that you unanimously agree
6 upona verdict.

7 As stated in the instructions given at the
8 time the case was given to you for decision, you
9 should not surrender your honest convictions as to
10 the weight or evidence solely because of the opinion
11 of other jurors or for the mere purpose of returning
12 a verdict, however, it is your duty as jurors to
13 consult with one another and to deliberate with a
14 view to reaching an agreement, if you can do so
15 without violence to individual judgment.

16 Each of you must decide the case for yourselves
17 but should you do so only after consideration of the
18 evidence in the case with your fellow jurors and in
19 the course of your deliberations you should not
20 hesitate to reexamine your own views and change your
21 opinion if convinced it is erroneous. In order to
22 bring twelve minds to an unanimous result you must
23 examine the questions submitted to you with candor
24 and frankness and with proper deference to and with
25 regard to the opinions of each other that is to say

F-4

1 in conferring together each of you should pay due
2 attention and respect to the views of the others
3 and listen to each other's arguments with a disposi-
4 tion to reexamine your own views. If the greater
5 number of you are for a conviction, each dissenting
6 juror should consider whether a doubt in his or her
7 mind is a reasonable one, since it makes no effective
8 impression on the minds of so many equally honest,
9 equally conscientious jurors who bear the same respon-
10 sibility, serve under the same oath and who have
11 heard the same evidence with the same attention and
12 equal desire to arrive at the truth.

13 On the other hand, if a majority or even a
14 lesser number of you are for acquittal, other jurors
15 ought to ask themselves again and most thoughtfully
16 whether they do not have reason to doubt the correct-
17 ness of a judgment which is not concurred in by
18 many of their fellow jurors and whether they should
19 not distrust the weight and sufficiency of evidence
20 which fails to convince the minds of several of their
21 fellow jurors beyond reasonable doubt.

22 You are not partisans. You are judges of the
23 facts. Your sole interest here is to seek the truth
24 from the evidence in the case. You are the exclusive
25 judges of the credibility of all the witnesses and

F-4

of the weight and effect of all the evidence.

In performance of this high duty, you are at liberty to disregard all comments by both Court and counsel including, of course, the remarks I am now making.

Remember at all times, that no juror is expected to yield the conscientious conviction he or she may have as to the weight or effect of the evidence.

Remember also, after full deliberation and consideration of all of the evidence in the case, it is your duty to agree upon a verdict, if you can do so without violating your individual judgment and consciences.

Remember too, if the evidence in the case fails to establish guilt beyond a reasonable doubt, the accused should have your unanimous verdict of not guilty.

In order to make a decision more practicable, the law poses the burden of proof on one party or the other in all cases. In the present case, the burden of proof is on the government. Above all, keep constantly in mind that unless your final conscientious appraisal of the evidence in the case clearly requires it, the accused should never be

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1 exposed to the risk of having to run twice the
2 quantlet of a criminal prosecution and to endure a
3 second time mental, emotional and financial strain
4 after a criminal trial. You may conduct your
5 deliberations as you choose but I suggest you now
6 carefully reexamine and reconsider all the evidence
7 in the case bearing upon the requests before you.
8 You may be as leisurely in your deliberations as the
9 occasion may require and take all the time you feel
10 is necessary. You may now retire and continue your
11 deliberations in such manner as shall be determined
12 by your good and conscientious judgment as reasonable
13 men and women. The jury may retire.

14 (The jury withdrew from the courtroom at
15 5:15 P. M.)
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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA, :
6 -against- : 76-CR-351
7 DANIEL PEREZ, :
8 Defendant. :
9 -----x

10
11 United States Courthouse
12 Brooklyn, New York
13 July 27, 1976
14 10:00 o'clock A.M.

15 B e f o r e :
16 HONORABLE HENRY BRANTWELL, U.S.D.J.
17
18
19
20
21
22

23 HENRI LEGENDRE
24 ACTING OFFICIAL COURT REPORTER
25

F-5

Appearances:

DAVID G. TRACER, ESQ.
United States Attorney
for the Eastern District of New York

BY: ALLAN CLEPPIN, ESQ.
Assistant U.S. Attorney

HELENA PICHEL-SOLLEDER, ESQ.
Attorney for Defendant

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nb. 3

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(After recess.)

THE COURT: Court Exhibit 12 says: "Your Honor, we cannot, never will agree.

Bring in the jury.

(Whereupon, the jurors entered the courtroom and are now seated in the jury box.)

THE COURT: Court Exhibit 12 says: "Your Honor, we cannot, never will agree."

Is that as to both Counts Two and Three.

THE FOREMAN: Yes, your Honor.

THE COURT: The jury is hopelessly deadlocked.

Mrs. Solleder, anything?

MS. SOLLEDER: No, your Honor.

THE COURT: All right, the jury is hopelessly deadlocked, the Court will declare a mistrial and the jury is discharged with the thanks of the Court.

I want to thank you for your efforts and your cooperation, it was our pleasure to have you, and you are discharged from your jury duty, too, because that's completed, so you may leave and have a nice day.

(Whereupon, the jurors were excused.)

MS. SOLLEDER: I move to dismiss Counts Two and Three of the indictment on the ground that the jury having acquitted the defendant on Count One, it would be inconsistent had they found him guilty of Count Two

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1 4 and Three; also, on the further grounds that my
2 interpretation of the note was that the jury had found
3 that he did not make any false statements on the 1099
4 and it was solely on a question of law as to which the
5 Court did not enlighten them; and also on the ground
6 that the Government refused to state its position on
7 the record, which I think would have clarified matters
8 for the Court, for counsel and for the jury.

9 THE COURT: Your application is denied. The
10 case is for trial on September 7, 1976, at 10 a.m.
11 That's just a reminder.

12 MS. SOLLEDER: I may not be available.

13 THE COURT: That's when this case is for trial
14 under the Speedy Trial Act. The Court has 60 days
15 within which to retry the case and that is your date
16 for trial.

17 MS. SOLLEDER: This is much earlier than 60
18 days.

19 THE COURT: You think I should wait for the 60th
20 day to start the case; that's your day for trial.

21 MS. SOLLEDER: I don't know whether I'll be
22 available.

23 THE COURT: That is a Certificate of Engagement,
24 and it requires you to be here for trial on that date.

25 MS. SOLLEDER: I'll probably be on trial in

F - 1

5 Southern District on that date.

THE COURT: But you are on trial here now.

MS. SOLLEDER: This is a case where there were 30 defendants in the Southern District, I can't walk out on that.

THE COURT: What date is it on for?

MS. SOLLEDER: August 10th or 11th.

THE COURT: This is your date for trial on this case and that's your Certificate of Engagement.

(Whereupon, the Court stood in recess.)

* * *

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On June 4, 1976, the defendant was to appear to waive his rights to a speedy trial. Defendant did not appear. Matter was adjourned until June 18, 1976.

On June 18, 1976, the defendant did not appear. Matter was adjourned until June 21, 1976.

On June 21, 1976, the defendant did not appear. Matter was adjourned until June 25, 1976. Defendant ordered to give handwriting exemplars.

On June 25, 1976, the United States filed a Notice of Readiness for Trial with the Clerk of the Court and mailed a copy of the said Notice to the defendant's attorney Helena Pichel-Solleder.

On June 25, 1976, the defendant did not appear. Bench warrant issued.

On July 6, 1976, the defendant appeared voluntarily. Bench warrant vacated. Trial set for July 20, 1976.

STATEMENT OF FACTS

From November 1975 through February, 1976, Special Agents of the Internal Revenue Service conducted an investigation into allegations of widespread "ten percenting" at Aqueduct Racetrack, Queens, New York.

The term "ten percenting" refers to an activity whereby an individual, commonly called a "ten percenter," either approaches or is approached by a bettor who owns a winning "Big Triple" or "Exacta" pari-mutuel ticket worth \$600.00 or more on a two dollar (\$2) bet. He then offers to cash the bettor's winning ticket for a fee. The fee is usually ten percent of the ticket's value. The "ten percenter" presents the winning

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ticket and usually his own identification to the mutuel cashier. Consequently, the identification of the true winner is not disclosed to the racetrack making it impossible for the racetrack to prepare and present a true and accurate Information Return, Form 1099 to the Internal Revenue Service as is required by Title 26, United States Code, Section 6041(a) and further making it highly unlikely that the true winner will pay the tax on said winnings.

As a part of the investigation, surveillances were conducted at Aqueduct Racetrack by Special Agent Gerald M. Levy and other Special Agents of the Internal Revenue Service. The surveillances indicated that an unknown individual, later identified as the defendant DANIEL PEREZ; (a) attended the racetrack frequently and (b) appeared to be soliciting winning tickets from true winners of races paying in excess of \$600 on a \$2 bet. Therefore, on November 24, 1975, when PEREZ was observed completing an identification form and cashing a winning ticket paying in excess of \$600 for a \$2 bet, Special Agent Levy examined, initialed and dated the form. Said form bore the name, address and signature of one Miguel Valles, 865 Crotona Park, New York, New York.

On January 21, 1976 the defendant, then believed to be Miguel Valles, was observed completing an identification form by Special Agents Levy, Michael Marino, and Edward Zybul. After completing the form, the defendant was observed cashing a ticket at the Previous Day Cashier's window. The identification form was examined, initialed and dated by Special Agent Marino. Said form bore the name, address and signature of one Carlos Diaz, 148 W. 17th Street, New York, New York.

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On January 27, 1976, the defendant was again observed completing an identification form and cashing a winning ticket. Again, the form was examined, initialed and dated by Special Agent Levy. Said form bore the name, address, and signature of one Carlos Diaz, 148 W. 17th Street, New York, New York.

On or about March 10, 1976, Special Agents of the Internal Revenue Service were advised by the Thoroughbred Racing Protective Bureau at Aqueduct that the individual known to them as Miguel Valles and/or Carlos Diaz was in fact a former Aqueduct employee named Daniel Perez and that he resided at 1800 University Avenue, Bronx, New York.

As can be seen from a reading of the Statement of Facts, the facts in the case concerning DANIEL PEREZ are somewhat different and the violations of Title 26, United States Code, Section 7206(2) committed by him are somewhat more obvious than the usual "ten percenter" case. As was previously stated, the "usual" ten percenter case involves a ten percenter cashing a ticket for a true winner while using his own true identification. Since gambling winnings constitute gross income, the "ten percenter" usually picks up losing pari-mutuel tickets off of the ground at the racetrack and deducts his gambling "losses" to the extent of his "winnings". In the instant case, on each of the three occasions that the defendant was observed completing the required forms and cashing the winning tickets, he both approached and left the pari-mutuel window alone. Therefore, it is possible, though unlikely, that the tickets cashed by the defendant were in fact his own. However, even assuming arguendo that the three winning tickets were in fact his own, MR. PEREZ committed the crimes charged because

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by using bogus identification he obviously caused Aqueduct Racetrack or the New York Racing Association, Inc. as it is formally known to prepare and present false and fraudulent Information Return Forms 1099 to the Internal Revenue Service.

It should be noted that the three winning pari-mutuel tickets cashed by the defendant paid the following amounts on a \$2 bet:

- 1) November 24, 1975 - - Exacta - - \$800.60
- 2) January 21, 1976 - - Triple - - \$1,205.00
- 3) January 27, 1976 - - Exacta - - \$622.60

STATUTES

Title 26, United States Code, Section 7206(2), Fraud and False Statements

Any person who wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than three years, or both, together with the costs of prosecution.

Title 26, United States Code, Section 6041(a)

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of . . . fixed or determined gains, profits and income. . . of \$600.00 or more in any taxable year . . . shall render a true and accurate return to the Secretary

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by hiring someone else to act as a conduit." United States v. Dumaine, 493 F.2d 1257, 1258 (1st Cir. 1974).

Surely, if the Forms 1099 were found to be false and fraudulent even where the "cashier" submitted his true name and address, a fortiori the Forms 1099 were false and fraudulent in the instant case where the defendant submitted bogus identification thus making it wholly impossible for the government to "locate and check upon recipients of income and the amounts they receive."

MATERIAL MATTER

While materiality is a question of law, most courts are reluctant to so instruct a jury. Hoover v. United States, 358 F.2d 87 (5th Cir. 1966), cert. denied, 385 U.S. 822. Materiality is tested by whether the falsity would have a tendency to influence the Internal Revenue Service in its processing of the return. United States v. Di Varco, 484 F.2d 670 (7th Cir. 1973). As was previously mentioned the very purpose of Title 26, United States Code, Section 6041 is to help the Internal Revenue Service locate and check upon recipients of income and the amounts they receive.

In the instant case the government will prove that the Forms 1099 are false in that the names Carlos Diaz and/or Miguel Valles appear as the recipient of the income, when in fact the defendant, DANIEL PEREZ received said income. Surely, the falsity of the Forms 1099 is material under any interpretation of the law.

WILFULL

Wilfullness is defined as meaning deliberately and with knowledge, as distinguished from something which is merely careless, inadvertant

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occasions, held winning tickets to the "twin double" at Yonkers Raceway, and procured the services of a third person to complete and sign [an identification form] required by the track before it would pay the proceeds of such tickets. This form was used by the track in compiling a United States Information Return (Form 1099) for the Internal Revenue Service, which could use the form to check on a taxpayer's income. [The defendants] were in essence charged with causing the falsification of this Form 1099." See also United States v. Haimow, 404 F.2d 38, 39 (2d Cir. 1968) and United States v. Kessler, 449 F.2d 1315, 1316-1317 (2d Cir. 1971). (The procedure followed by Yonkers Raceway and described in Maistrow, is the exact same procedure followed by Aqueduct Racetrack in the instant case).

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In Maistrow, Kessler, and Haimowitz, the defendants were true winners of pari-mutuel tickets worth in excess of \$600 on a \$2 bet. In each case, the defendants gave their winning tickets to third persons who executed identification forms using their true identity and cashed the winning tickets. In each case, the defendants argued, inter alia, that ". . . because the persons to whom the proceeds of the winning tickets were paid gave their correct names and addresses to the racetrack, the government was in no way defrauded or deprived of information it was entitled to receive." United States v. Haimowitz, supra at p. 40. In each case, the claims of the defendants were rejected. In Haimowitz, in rejecting the claim, the Court stated: "It is indisputable that section 6041 [of Title 26, United States Code] is intended to help the government locate and check upon recipients of income and the amounts they receive." at p. 40; see also United States v. Carroll, 345 U.S. 457 (1953). "Such a purpose would be defeated if the actual recipient of the income could camouflage his gain

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 UNITED STATES OF AMERICA, :

6 -against- :

No. 76 CR 351

7 DANIEL PEREZ, :

8 Defendant. :

9 -----X
10
11 United States Courthouse
12 Brooklyn, New York

13 November 24, 1977
14 10:00 O'clock A.M.

15 B e f o r e :

16 HON. HENRY BRAMWELL, U.S.D.J.
17
18
19
20
21
22
23

24 MAURICE S. DAVIS
25 Acting Official Court Reporter

H

1
2 APPEARANCES:

3 DAVID G. TRAGER, ESQ.,
4 United States Attorney for the
Eastern District of New York

5 BY: LEONARD SANDS, ESQ.

6
7 HELENA PICHEL-SOLLEDER, ESQ.,
8 Attorney for Defendant

9
10 MANUEL RAS,
Interpreter
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1 was purely hearsay on his part, and if he wanted to
2 hear direct testimony on this, they were entitled
3 to have a witness brought before them, which would
4 be somebody from the New York Racing Association,
5 which is the body that fills out the 1099 forms.

6 Secondly, I think it's very obvious that the
7 Grand Jury was thoroughly confused as to what the
8 crime charged here was and in support of that contention
9 your Honor, I refer to Page 9 of the Grand Jury
10 Minutes, a copy of which I attached to my papers, as
11 an exhibit, and it is Line -- where it says, "A
12 Grand Jury." Does your Honor have that?

13 THE COURT: I'm not sure because the pages are
14 stapled together.

15 MS. SOLLEDER: It's next to the last page.

16 THE COURT: Next to the last page?

17 MS. SOLLEDER: Yes. Does your Honor have it?

18 THE COURT: I have it next to the last page.

19 MS. SOLLEDER: It says, "Mr. Grand Juror, you
20 say there was no true winner that you observed; is
21 that right?

22 "Answer: That's correct."

23 Then, jumping down to where the witness is
24 talking, "We had observed a group of individuals who
25 Mr. Pettit (ph) were part of the rest soliciting on

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1 the lines, when the true winners would line up."
2

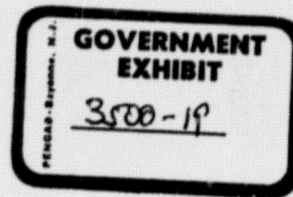
3 He did not see him take the secure and true
4 ticket from a true winner. The Grand Jury thought
5 there was some crime here, because there was no true
6 winner observed and Danny was cashing in a check for
7 someone else, apparently. The Government's whole
8 contention is that Danny Perez was the true winner,
9 so it's clear that the Grand Jury didn't know what
10 the crime -- what it is they are maintaining the
11 defendant committed.

12 At the trial, they maintained that Danny was
13 the true winner and used somebody else's name, so
14 your Honor, I might submit to that on purely legal
15 grounds, this indictment should be dismissed, and if
16 the Government wishes to resubmit it to the Grand Jury,
17 with proper testimony, they have that privilege.

18 My final point is, as far as the public
19 interest is concerned, since this indictment, the
20 legislature has enacted the Tax Reform Act of 1976
21 particularly Section 3402G, which provides that where
22 a person has winnings of over a thousand dollars at
23 the track, the track will have to withhold the tax
24 from paying over the winnings, so that the chances of
25 this sort of alleged crime being committed again, are
remote, and therefore in the interest of justice, and

11.

UNITED STATES GRAND JURY
EASTERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA :
 -v- :
DANIEL PEREZ :
----- x

225 Cadman Plaza East
Brooklyn, New York
May 19, 1976
10:40 o'clock a.m.

APPEARANCES:

ALAN SLEPPIN, ESQ.,

Special Attorney, U.S. Department
of Justice

Witness: Gerald Levy

STEWART NISSENBAUM,
Acting Grand Jury Reporter

NATIONAL REPORTING INC.
CERTIFIED SHORTHAND REPORTERS
FIVE WORLD TRADE CENTER
NEW YORK, N. Y. 10048
[212] 466-1280

Ex. A

1
H 2 A Yes, he said that he understood them.

3 Q Among other things, did Mr. Perez state that he was
4 are of the Internal Revenue Service requirement that all
5 persons who won over \$600 on a \$2 bet to fill out an ID slip
6 correctly and truthfully?

7 A Yes.

8 MR. SLEPPIN: I have no further questions of this
9 witness. Does anyone have any questions?

10 A GRAND JUROR: You say there was no true winner
11 that you observed, is that right?

12 THE WITNESS: That's correct.

13 A GRAND JUROR: What first alerted you to check
14 his return?

15 THE WITNESS: We had observed a group of individ-
16 uals who Mr. Perez was part of, soliciting on the lines
17 when the true winners would line up. We did not see
18 him at any time secure a ticket from a true winner.
19 However, when I observed him cashing and completing
20 this first slip on November 24th, I wanted to identify
21 him so I would know his name in the future. That's
22 what prompted me to go to the window and get the slip
23 that he filled out at that particular time.

24 A GRAND JUROR: Okay.

25 MR. SLEPPIN: Any other questions?

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

X

UNITED STATES OF AMERICA,

-against-

AFFIRMATION OF SERVICE
#77-1076

DANIEL PEREZ,

Defendant-Appellant.

X

HELENA PICHEL SOLLEDER, attorney for defendant appellant, affirms under penalty of perjury, that on the 23rd day of May, 1977 she served 3 copies of the appellant's brief and appendix on the United States of America, by depositing in a mailbox in a prepaid wrapper, addressed to Philip Blum, Attorney Department of Justice, Appellate Section Tax Division, at Department of Justice, Washington, D.C.

Dated: May 23, 1977

Helena Pichel Solleder